United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

Docket No. 77-7116

In The

United States Court of Appeals

For the Second Circuit

B

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL - CIO,

Appellant,

— *vs.* —

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York, *et al.*,

Appellees.

On Appeal of An Interlocutory Order Denying Injunction From the Federal District Court, Northern District of New York

UNITED STATES COURT OF APPEALS
FILED
APR 4 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX

BLITMAN AND KING
Attorneys for Appellant
500 Chamber Building
Syracuse, New York 13202
Telephone: (315) 422-7111
Of Counsel:
EARLE W. PUTNAM, *General Counsel*
Amalgamated Transit Union
5025 Wisconsin Avenue, N.W.
Washington, D.C.
Telephone: (202) 537-1645
AXENFELD, WEBB, MARSHALL, BERSANI & SCOLARO
Attorneys for Authority Appellees
500 Building
500 South Salina Street
Syracuse, New York 13202
Telephone: (315) 422-9201
MARTIN L. BARR, ESQ.
Attorney for PERB Appellees
Public Employment Relations Board
50 Wolf Road
Albany, New York 12226
Telephone: (518) 457-2678

Daily Record Corporation
Rochester, New York

(8783)

Spaulding Law Printing
Syracuse, New York

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	1
Notice of Appeal	3
Endorsement of Judge MacMahon, dated 2-9-77	5
Application is Denied and Court Vacates Stay	6
Order to Show Cause and Temporary Restraining Order, dated 2-7-77	17
Affidavit of George Wright in Support of Motion	21
Certification of Bernard T. King, Esq.	28
Verified Complaint	29
Exhibits attached:	
A. Agreement Pursuant to Section 13(c)	46
B. Opinion, dated 12-22-76	58
Affidavit of Barry M. Shulman in Opposition to Motion and Temporary Restraining Order	60
Exhibits annexed:	
A. Title 11-D of the Public Authorities Law	69
B. Section 209, "Resolution of Disputes in the Course of Collective Negotiations"	91
C. Mailgram from Joseph P. Welch	95
D. PERB Letter, dated 12-1-76	97
E. Letter of Bernard T. King to Barry M. Shulman, dated 12-13-76	98
F. Letter of Dana E. Eischen, Fact-Finder, to Bernard T. King, dated 12-17-76	99
G. Letter of Dana E. Eischen, Fact-Finder, to Bernard T. King, dated 1-21-76	100
H. Affidavit of Warren Woodruff, sworn to on 2-8-77	101
I. National 13(c) Agreement	106
J. Letter of Royal L. O'Day to Paul J. Fasser, Jr., dated 8-11-75	120
K. Letter of Joseph P. Welch to Warren H. Frank, dated 8-15-75	122

Page

Exhibits annexed to Shulman Affidavit (cont'd.):
L. Section 49, Arbitration 124
M. Section 1609, Labor Standards 125
N. Affidavit of Russell D. Ferdinand, dated 2-8-77 .. 126

Supplemental Affidavit of Barry M. Shulman, dated 2-9-77 129
Exhibit annexed:
O. Letter of D.V. Maroney, Jr. to Hon. Paul J. Fasser, Jr., dated 3-23-76 131

Proceedings before Hon. Lloyd F. MacMahon on 2-9-77... 132

Motions For Summary Judgment:

Notice of Motion to Dismiss Complaint or for Summary Judgment 183

Affidavit of Barry M. Shulman in Support of Motion 185

Notice of Cross-Motion 188

Affidavit of Bernard T. King in Support of Cross-Motion and in Opposition to Defendants' Motion 190
Papers attached:
Letter from Bernard T. King to Barry M. Shulman, Esq., dated 12-13-76 194
Certificate of Service 195

Supplementary Affidavit of Bernard T. King 196
Exhibits attached:
A. Letter from George B. Wright to Warren Frank, dated 11-11-76 200
B. Letter from Bernard T. King to Warren Frank, dated 11-22-76 201
C. Letter from Barry M. Shulman, dated 12-1-76 ... 203
D. Letter from Bernard T. King to Barry M. Shulman, dated 12-13-76 205
E. Letter from Bernard T. King, dated 12-15-76 206
F. Letter from Martin L. Barr, dated 12-22-76 209
G. Letter from Barry M. Shulman to Blitman and King, dated 12-16-76 211

Page

Exhibits attached to King Supplementary Affidavit (cont'd.):
H. Letter from Bernard T. King to Barry M. Shulman, dated 12-21-76 213
I. Letter from Dana E. Eischen to Bernard T. King, dated 1-21-76 214

Proceedings Before Hon. Lloyd F. MacMahon on 2-21-77 . 215

Motion For Stay Pending Appeal to District Court:

Order to Show Cause, dated March, 1977 237

Motion for Order to Show Cause, Stay and Supersedeas .. 238

Affidavit of Jules L. Smith in Support of Motion 240
Exhibits annexed:
A. Endorsement, dated 2-11-77 and Proceedings, dated 2-9-77 245
B. Letter from Dana E. Eischen to Bernard T. King. . 257
C. Notice of Appeal 258

Certificate of Service 260

Affidavit of Barry M. Shulman in Opposition to Motion for Order to Show Cause, Stay on Appeal and Supersedeas 262
Exhibits annexed:
A. Endorsement 272
B. Answer with Attachments 273

Certificate of Service 297

Memorandum of Judge MacMahon 299

DOCKET ENTRIES.

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J	N/S	O	R	R 23	DEMAND $ OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
206	77-	CV-45	02-	07-	77	3	890	1				0834			✓

PLAINTIFFS

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO

DEFENDANTS

CENTRAL NEW YORK REGIONAL TRANSPORATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive

CAUSE Declaratory, injunctive, and equitable relief; enjoin deprivation of civil rights; enforce rights under federal law; pendant cause based on contract. Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §1601 et.seq. Civil Rights Act of 1871,42 USC §1983

ATTORNEYS

Blitman and King, Esqs.
500 Chamber Bldg.
351 S. Warren St.
Syracuse, N.Y. 13202

Axenfeld,Webb,Marshall,Bersani & Scolaro,Esqs.
500 South Salina Street
Syracuse, N.Y. 13202
(For Central N. Y. Regional Transportation Authority)

Martin L. Barr, Esq.
Public Employment Relations Board
50 Wolf Road
Albany, N.Y.
(For PERB)

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS

FILING FEES PAID		
DATE	RECEIPT NUMBER	C.D. NUMBER
2/9/77	53555	39
3/2/77	54062	45

STATISTICAL CARDS	
CARD	DATE MAILED
JS-5	
JS-6	

DOCKET ENTRIES.

DATE 1977	NR.	PROCEEDINGS
Feb. 7	1	Filed complaint, issued summons -orig. & 58 copies- and delivered to Plaintiffs' attorney for service by Order of Judge MacMahon (2/7/77)
Feb. 7	2	Filed Order to Show Cause and Temporary Restraining Order of Judge MacMahon (2/7/77) returnable 2/15/77 at Syracuse, and Order that service of Order, Complaint, Summons, etc. be made by person selected by Plaintiff, and Affidavit of George Wright, together with Certification of Bernard T. King
Feb. 11	3	Filed Endorsement of Judge MacMahon (2/9/77) denying the motion for a preliminary injunction and granting defendants' cross-motion to vacate the temporary restraining order and that the parties are directed to proceed forthwith with the fact-finding procedures of the Taylor Law
Feb. 11	4	Filed Judgment and mailed cards, re: Judgment to Blitman & King, Esqs. Axenfeld,Webb,Marshall,Bersani and Scolaro,Esqs., and Martin L. Barr
Feb. 9		Motion for TRO - Application is denied. Court vacates stay. Complaint is not dismissed at this time
Feb. 16	5	Filed Notice of Motion, returnable Feb. 21, 1977 at Utica for an order dismissing complaint or for summary judgment & Affidavit of Barry M. Shulman
Feb. 16	6	Filed Affidavits of Service of Notice of Motion to Dismiss Complaint or for Summary Judgment
Feb. 17	7	Filed Cross-Motion, returnable Feb. 21, 1977 at Utica for an order granting summary judgment is favor of the plaintiff, Affidavit of Bernard T. King & Certificate of Service
Feb. 18	8	Filed Brief on Behalf of Plaintiff Division 580, Amalgamated Transit Union, AFL-CIO
Feb. 25	9	Filed endorsement of Judge MacMahon (2/21/77) on the back of the Motion to Dismiss Complaint or for Summary Judgment as follows, "It appearing that there are issues of fact entangled with novel questions of law, the within motion to dismiss the complaint and/or for summary judgment is in all respects denied, following oral argument, for reasons more fully stated in the transcript of the hearing"
Feb. 25	10	Filed endorsement of Judge MacMahon (2/21/77) on the back of the cross-motion as follows "It appearing that there are issues of fact entangled with novel questions of law, the within cross-motion for summary judgment is in all respects denied, following oral argument, for reasons more fully stated in the transcript of the hearing."
Feb. 21		Motion and Cross motion for Summary Judgment-Motions are denied
Mar. 2	11	Filed Copy of Unsigned Order to Show Cause; Motion; Affidavit and Exhibits.
Mar.2	12	Filed Notice of Appeal by plaintiff
Mar.2	13	Filed Bond on Appeal
Mar. 3	14	Filed Brief on Behalf of Plaintiff Division 580, Amalgamated Transit Union, AFL-CIO in support of Motion for Injunction and/or Stay Pending Appeal
Mar. 7	15	Filed Answer
Mar. 7	16	Filed Affidavit of Barry M. Shulman in Opposition to Motion for Order to Show Cause, Stay on Appeal and Supersedeas
Mar. 8	17	Filed Original Order to Show Cause, Motion, Affidavit and Exhibits with endorsement of Judge MacMahon thereon
Mar. 8	18	Filed Memorandum of Judge MacMahon (3/7/77) denying plaintiff's application for a stay and other relief
Mar. 11	19	Filed Civil Appeal Scheduling Order

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J.

NOTICE OF APPEAL

Civil Action No.

77-CV-45

NOTICE OF APPEAL.

PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.;

ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

NOTICE OF APPEAL

Notice is hereby given that Division 580, Amalgamated Transit Union, AFL-CIO, Plaintiff above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order denying the Plaintiff's Motion for a Preliminary Injunction and granting Defendant's Cross-Motion to vacate the Temporary Restraining Order, entered in this action on the 11th day of February, 1977.

DATED: March 1, 1977.

BLITMAN AND KING

BY: Jules L. Smith
Jules L. Smith

Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

Telephone: (315) 422-7111

ENDORSEMENT OF JUDGE MacMAHON, dated 2-9-77.

Amalgamated Transit Union, AFL-CIO -v- Central New York Regional Transportation Authority et al.

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
FEB 11 1977
AT ___ O'CLOCK ___ M.
J. R. SCULLY, Clerk
UTICA

ENDORSEMENT
77-CV-45

Upon oral argument of the within motion for a preliminary injunction, all parties conceded that there were no issues of fact requiring an evidentiary hearing and that the motion was ripe for decision. Following oral argument, the court, therefore, made and dictated its findings of fact and conclusions of law into the record.

Based on the arguments, the papers submitted in support of and in opposition to this motion, and on the court's reasons, findings and conclusions placed on the record, the within motion for a preliminary injunction is denied in all respects since plaintiff has failed to make a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward plaintiff. See Sonesta Int'l Hotels Corp. v. Wellington Associates, 483 F.2d 247 (2d Cir. 1973).

Defendants' cross-motion to vacate the temporary restraining order is granted, and the parties directed to proceed forthwith with the fact-finding procedures of the Taylor Law.

So ordered.

Dated: Syracuse, N. Y.
February 9, 1977

Lloyd F. MacMahon

LLOYD F. MacMAHON*
United States District Judge

---

* Of the Southern District of New York, sitting by designation.

APPLICATION IS DENIED AND COURT VACATES STAY.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----------x

In the Matter of :

:

Amalgamated Transit Union, :
AFL-CIO 617, Syracuse, New York

:

Plaintiff :

:

- and - :

:

Central New York Regional Transportation :
Authority, et.al.

:

Defendants :

----------x

Proceedings in the above-entitled matter came on before the United States District Court Northern District of New York, at Syracuse, New York, February 9, 1977, before the HONORABLE LLOYD F. MACMAHON, presiding.

APPLICATION IS DENIED AND COURT VACATES STAY. 2

A P P E A R A N C E S

BARRY M. SHULMAN: Counsel for Central New York Regional Transportation Authority and Subsidiary and Directors.

WARRAN H. FRANK: Executive Director of Central New York Regional Transportation Authority.

WARRAN WOODRUFF: Vice President of Subsidiary Appropriations.

RUSSELL FERDINAND: Chief Financial Officer of Central New York Regional Transportation Authority.

- and -

JAMES LAVAUTE: Attorney for Plaintiff

JOSEPH WELCH: Business Agent for Amalgamated Transit Unit LD580

GEORGE WRIGHT: President of Amalgamated Transit Unit.

APPLICATION IS DENIED AND COURT VACATES STAY.

3

THE COURT: This matter came on the Plaintiff's application for a temporary injunction before Judge Munson on February 7, 1977. Judge Munson was disqualified, I think, because a firm with which he was formerly associated represented a defendant on earlier occasions. In any event, he summarized the papers for me, and at my direction, signed my name to the temporary restraining order simply to keep the status quo pending an opportunity andtime by the Court to hear the application. The Court, as Judge MacMahon is sitting by designation in Utica at the time of this application on February 7, I was sitting in a trial which fortunately settled yesterday afternoon, and enabling me following some telephone calls to my secretary by Mr. Shulman and his urgent request that this matter be heard on a Motion to Vacate it at once. The case that I was presiding on settled yesterday afternoon, I checked with the Clerk, the Deputy Clerk, Jim Evans, to contact Mr. Shulman and get the parties available to hear his application to vacate the stay this morning at 11 A.M. here in Syracuse. The Court has read the papers and considered the exhibits and listened

carefully to the arguments of counsel. This matter was expedited because the hearing under the fact finding procedures of the New York State Taylor Law were scheduled to commence this morning at 10 o'clock, and it was with prompt resolution of this matter to the end, so those hearings could go forward, if they were being properly held, that I accelerated the return day of this application from the 15th of February to this morning on the 9th of February at 11 o'clock. There can be no question that this action and application for a declaration or judgement or a temporary restraining order and injunctive relief raises novel questions on the merits, and that more time might vastly improve the substance and or not the substance, but -- still and perhaps the elabortion of the Court's views about this matter having heard arguments, I am comvinced, however, that it would not alter my ultimate conclusion nor affect in any significant way the substance of my opinion about it. There is no factual issue, both parties concede, requiring any Evidentiary Hearing, and both parties concede that the

matter is now ripe for decision on the merits. It is clear to the Court that there is an underlying collective bargaining agreement which expired on November 1, 1976. Under that agreement, there is no question that labor disputes and disputes concerning working conditions were to be submitted to arbitration. There is likewise no dispute that what has been refered to here as the 13(c) agreement was entered into, which on its face in paragraph nine states that in the case of any labor dispute or collective bargaining does not result in agreement, the same may be submitted at the written request of either party to a board and arbitration composed of three persons, etcetera. The same paragraph goes on to define the term labor dispute, shall be broadly construed and shall include any controversy concerning wages, salaries, working conditions or benefits including health and welfare, sick leave insurance and pension retirement provisions, the making or maintenance of collective bargaining agreement, the terms to be included in such agreement, the interpretation of such agreement, or application of such agreement, the adjustment of grievances,

any claim difficulty or controversy arrising out of or by virtue any provisions of this agreement for protection of employees effected by the project. The Court thinks it is plain that under the very language of this agreement interest disputes of the kind that we have here looking to renewal or maintenance of collective bargaining agreement are clearly covered. Likewise, the Court feels confident that the very purpose of this 13(c) agreement is to assure that the matter that labor disputes or disputes of this type involved here as well as others would be submitted to arbitration, the binding arbitration, with a view that there be no interruption of the public service involved in all of these systems of mass transportation, and that when the Federal Government took over these private systems that the public interest in uninterrupted services would be best preserved by compulsory arbitration. Certainly, that isn't any novel concept in Federal Law. It has long been the thesis underlying the Railway Labor Act, to mention only one phase of it as well as the National Labor Relation Act. But, in

the field of transportation, the Federal Government certainly in the field of Federal Interstate Transportation feels that there should be various mediation factfinding procedures and ultimately binding arbitration. The words that the amendment to this agreement I think on its face has a saving clause that prevents any superceding or loss of prior rights concerning labor disputes and arbitration. That is expressly -- I don't see it readily at hand, but it is in the record, it was read at the time and there isn't any question that there is such a clause. I think the authority there -- here reads the word project far too narrowly. The project part evenly includes the act which describes not only certain pieces of equipment or real estate or other facilities, but the assets, the business, the business is a going concern, which of course was the case here. So, that I think it can -- any fair reading of this, any reasonable reading of it has got to include this situation within the term project so that it is not in any way excepted from the operation of this 13(c) agreement. It

is clear, I think, also by paragraph four of page two that this falls within this 13(c) agreement, falls within any other agreement, surely all of the parties to the 13(c) agreement were aware of its existance and did not tend to confine it to the underlying collective bargaining agreement because it had -- they could well have left it with collective bargaining agreement and not added the phrase any other agreement. I therefore think that the union is entitled to go to arbitration in this matter. There is one troubling question, and that is whether the union has waived whatever right it might have had under this 13(c) agreement by its request for the appointment of a mediator under the Taylor Law. Surely the union has to be aware that that is step one under the procedures for resolving labor disputes short of strikes, and there can't be any question that the union did invoke the Taylor Law. Whether it intended to invoke it all the way is not clear, but we think it clear that you can't have it half way under the Taylor Law. You either invoke its benefits and procedures

or you reject them, and I think once you invoke it by asking for the appointment of a mediator, you elect to follow that procedure. There can't be any question that this was a knowing and choice made by the union. This conclusion, I think, is fortified by the fact that not withstanding, the impass was reached here a long time ago, and this application is a newly minted one. The feeling, it seems quite clear to me, that it is an afterthought in an attempt, a belated attempt to get out from under this question and escape the Taylor Law. I think, therefore, that while the union might have been on good ground had it taken the course it now takes initially, that it is no longer on good ground, that it did waive whatever rights it might have had under the 13(c) agreement to arbitration, and has voluntarily and intentionally submitted to the procedures of the New York State Taylor Law. The factfinding procedures have been standing by ready to proceed, and I see no reason why they should not proceed forthwith. Accordingly, the Court vacates the stay. One more point, I think it is plain that the Court here does have federal question and jurisdiction,

but we vacate the stay, and I think dismiss the complaint. Is there any reason why we shouldn't dismiss the complaint?

MR. LAVAUTE: Well, Your Honor, I have to give that some thought. I wouldn't want to dismiss the complaint, I would want to carry it through.

THE COURT: Well, it isn't necessary at this point, I simply would deny your application for a preliminary injunction, and what the Court has said will constitute my findings of facts and conclusion of law. My only reservation is they are in very rough form, as they must necessarily be in the urgency of the situation.

MR. LAVAUTE: Your ruling applies to the motion for preliminary injunction?

THE COURT: That is right.

Submit?

MR. LAVAUTE: Yes, we do wish to dismiss the complaint.

THE COURT: We won't dismiss the complaint at this stage.

(Whereupon the proceeding was adjourned)

APPLICATION IS DENIED AND COURT VACATES STAY.

R E P O R T E R ' S C E R T I F I C A T I O N

I, Armand J. Roberts, Official Court Reporter for the United States District Court in and for the Northern District of New York, do certify this to be a true and accurate transcription of the stenographic notes as made by me during the aforesaid proceedings.

Armand J. Roberts
Official Court Reporter
United States District Court

ALBANY, NEW YORK
FEBRUARY 12, 1977

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER, dated 2-7-77.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.;

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Civil Action No.

77-CV-45

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER, dated 2-7-77.

ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

Upon the Summons + Verified Complaint, the Affidavit of George Wright attached hereto, and the Certificate of Bernard T. King, Esq., attorney for the Plaintiff, attached hereto, it is

ORDERED, that the Defendants show cause before this Court, at 100 South Clinton Street Syracuse, N.Y., on the 15th day of February, 1977, at 11 o'clock in the fore noon, or as soon thereafter as counsel can be heard why an order, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, should not be made herein, preliminarily enjoining Defendants Robert D. Helsby, Joseph R. Crowley and Ida Klause, together constituting the New York State Public Employment Relations Board; Harold R. Newman, as Director of Conciliation, New York State Public Employment Relations Board; and Dana E. Eischen, as Factfinder, New York State Public Employment Relations Board (all of whom are referred to as the "PERB Defendants"), their agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action, restraining them from engaging in or causing any of the acts hereinafter specified; and

It appearing to the Court that the PERB Defendants are about to commit the acts hereinafter specified and that they will do so unless restrained by order of this Court, and that immediate and irreparable injury, loss and damage will result to Plaintiff

before notice can be given and the PERB Defendants or their attorneys can be heard in opposition to the granting of a preliminary injunction, in that the PERB Defendants will conduct a factfinding hearing before there has been proper opportunity for a judicial determination of the merits of Plaintiff's claims, thereby rendering meaningless Plaintiff's right to be heard, and that Plaintiff and its members will be deprived of rights secured by the laws of the United States; will be required to participate in a needless hearing; and Plaintiff's rights and those of its members to arbitrate a present dispute over a collective bargaining agreement will be eroded because of a time consuming factfinding hearing; and Plaintiff's right to have a binding, impartial resolution of the present dispute will be prejudiced; it is further

ORDERED, that the PERB Defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them be and they hereby are restrained, pending the hearing on the motion for preliminary injunction, from causing the impasse resolution procedures set forth in New York Civil Service Law §209 to be commenced or conducted, and from commencing or conducting a factfinding hearing concerning the present dispute over the terms of a new collective bargaining agreement between Defendants CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc., and Plaintiff; and it is

ORDERED, that no undertaking be filed by the Plaintiff, since it does not appear that any damages may be suffered or sustained by any party who is found to be wrongfully restrained; and it is

ORDERED, that service of a copy of this Order to Show Cause together with a copy of the papers hereto attached on the Defendants on or before February 8, 1977 at 5:00 o'clock P.M., be

deemed sufficient service; and it is further

ORDERED, that service of this Order, and the Summons Complaint, Affidavit and Certification herein, may be made by any person over the age of 18 years, selected for that purpose by the Plaintiff.

Issued at 4:05 P.M., February 7, 1977.

/s/ Lloyd F. MacMahon
United States District Judge

AFFIDAVIT OF GEORGE WRIGHT IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York, ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.;

A F F I D A V I T

Civil Action No.

_____

AFFIDAVIT OF GEORGE WRIGHT IN SUPPORT OF MOTION.

ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

I, GEORGE WRIGHT, being duly sworn on oath, state:

1. I am the President of Division 580, Amalgamated Transit Union, AFL-CIO, the Plaintiff herein. I have been involved in the dispute out of which this action arises from its inception, in my capacity as Plaintiff's President, and am fully familiar with the facts herein.

2. Plaintiff is a labor organization and is the duly authorized collective bargaining representative of employees of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc., herein referred to collectively as "Centro" or "the corporations".

3. The corporations are public benefit subsidiary corporations of Defendant Central New York Regional Transporation Authority.

4. Plaintiff and Centro were party to a collective bargaining agreement covering Centro's employees, which employees are Plaintiff's members. The collective bargaining agreement was effective November 1, 1974 through November 1, 1976. The agreement has expired and Plaintiff and Centro have been engaged in negotiations for a new collective bargaining agreement.

AFFIDAVIT OF GEORGE WRIGHT IN SUPPORT OF MOTION.

5. Plaintiff and Centro have failed to reach agreement on the terms of a new collective bargaining agreement.

6. The Plaintiff, Centro, and the Central New York Regional Transportation Authority, are party to a separate agreement, executed on March 11, 1975 and still in effect. That agreement is known as a "§13(c) agreement" and was executed pursuant to the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §1601 et seq.

7. The §13(c) agreement was executed as part of a contract between the Authority and the United States Urban Mass Transportation Administration, for the grant of federal monies to the Authority. These grants were received by the Authority and utilized to assist in the purchase of assets of Syracuse and Eastern Transit Corporation, and to assist in the purchase of buses, bus shelters and other equipment, and the construction of facilities, for operating bus transportation systems by each of the corporations. CNY Centro, Inc. also receives operating grants under the Urban Mass Transportation Act.

8. Paragraph 9 of the 13(c) agreement provides for binding arbitration of a dispute between the Authority, Centro and the Plaintiff over the terms and conditions of a collective bargaining agreement.

9. Plaintiff is entitled to submit the present dispute over a new collective bargaining agreement to binding arbitration under the 13(c) agreement.

10. Plaintiff has appointed an arbitrator and informed Centro of that appointment and of the Plaintiff's intent to submit this contract dispute to arbitration. Centro refuses to participate in such arbitration, in violation of the 13(c) agreement.

11. Instead of proceeding to arbitration under the agreement, Centro has requested that the New York Public Employment Relations Board initiate its impasse resolution procedures, under which procedures Centro would be empowered to unilaterally determine the terms and conditions of a new collective bargaining agreement. PERB has appointed Defendant Dana Eischen as factfinder.

12. Defendant Eischen will, unless restrained, conduct a factfinding hearing on February 9, 1977, for the purpose of taking evidence and hearing arguments from the corporations and Plaintiff as to what the terms of a new collective bargaining agreement should be, and to issue a report and recommendations concerning the terms of a new agreement.

13. Any such recommendations by the factfinder would be, pursuant to New York Civil Service Law §200 et seq., non-binding on the parties.

14. If a factfinder's report were to issue, Centro and the Authority would not be bound by the said report, and, under the Taylor Law provisions, Centro would have the authority, to unilaterally determine the terms of a new agreement, if the parties were unable to reach voluntary agreement.

15. The factfinder appointed by PERB, Dana Eischen, has scheduled a factfinding hearing to be held on February 9, 1977. The factfinding hearing has been scheduled despite Plaintiff's expressed intention to submit the contract dispute to binding arbitration.

16. Unless restrained by the Court, Defendants Helsby, Crowley and Klause, together constituting the New York State Public Employment Relations Board; Defendant Newman, PERB Director of Conciliation; and Defendant Eischen, the PERB-appointed

factfinder (herein collectively referred to as the "PERB Defendants"), will cause the impasse resolution procedures of New York Civil Service Law §209.2 to be commenced or conducted, and will cause the factfinding hearing to go forward on February 9, 1977.

17. If Plaintiff is forced to participate in factfinding, it will be deprived of its right and the rights of its members to arbitrate the dispute under the §13(c) agreement. It would be time consuming and expensive for Plaintiff to prepare for and participate in such a factfinding hearing.

18. Moreover, if a factfinding hearing is held, and the Authority and Centro allowed at the same time to avoid arbitration under the §13(c) agreement, the delay which has already occurred in reaching agreement on a new collective bargaining agreement will be lengthened.

19. Under the factfinding procedure, the factfinder would issue a public report, setting forth findings and recommendations for settling the dispute. The issuance of such a report would deprive Plaintiff and its members of their right to submit the dispute to an unbiased, impartial arbitration panel for consideration of all of the facts and issuance of a binding award.

20. Such delay will work to the prejudice of Plaintiff's ability in any future arbitration of this contract dispute, to convince the arbitrators that increased wages on a retroactive basis are appropriate.

21. The delay inherent in a factfinding procedure would also serve to deprive Plaintiff and its members of their right to work under the terms of a collective bargaining agreement established by a neutral arbitration panel.

22. The holding of a factfinding hearing would also under-

mine Plaintiff's ability, in the eyes of its members, to adequately represent employees as it is required to do by law.

23. The holding of a factfinding hearing would also irreparably injure Plaintiff's members, who will be required to continue working under the terms, wage and benefit levels of a collective bargaining agreement which expired November 1, 1976.

24. The last yearly hourly rate increase received by Plaintiff's members, employees of Centro, occurred on November 1, 1975.

25. If the factfinding hearing is allowed to go forward, ability of Plaintiff to secure for its members increased wages will be further delayed.

26. No previous application for the relief herein requested has been made.

27. Unless the PERB Defendants are restrained by this Court, immediate and irreparable injury, loss and damage will result to Plaintiff and its members before notice can be given and the PERB Defendants or their attorneys can be heard in opposition to the granting of a preliminary injunction, in that a factfinding hearing will be conducted before there has been proper opportunity for a judicial determination of the merits of Plaintiff's claims, thereby rendering meaningless Plaintiff's right to be heard.

28. There is no foreseeable damage to any of the Defendants in this action if the relief requested herein is granted.

29. There is substantial likelihood that Plaintiff will be successful in its underlying action.

30. The damage to the Plaintiff if the restraining order is denied outweighs any foreseeable harm to the Defendants if the order is granted.

AFFIDAVIT OF GEORGE WRIGHT IN SUPPORT OF MOTION.

WHEREFORE, deponent moves this Court for an order in the form annexed, requiring the Defendants to show cause why a preliminary injunction should not issue herein, enjoining the PERB Defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them from causing the impasse resolution procedures set forth in New York Civil Service Law §209 to be commenced or conducted, and from commencing or conducting a factfinding hearing over the contract dispute described herein, pending the final hearing and determination of this action;

and for an order restraining the PERB Defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them from engaging in any of the above-specified conduct, until the hearing and determination of Plaintiff's application for a preliminary injunction.

George Wright
GEORGE WRIGHT

Sworn to before me this
4th day of February, 1977.

James R. LaVaute
Notary Public

JAMES R. LaVAUTE
Notary Public in the State of New York
Qualified in Orange Co. No. 04-4505121
My Commission Expires March 30, 1977

CERTIFICATION OF BERNARD T. KING, ESQ.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO 617 Wolf Street Syracuse, New York 13208 Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, et al., Defendants.	CERTIFICATION Civil Action No. _____

I, BERNARD T. KING, the attorney for the Plaintiff, the applicant for a temporary restraining order in the above-captioned proceeding, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, certify to the Court as follows:

That on February 4, 1977 I contacted by telephone Martin Barr, attorney for the PERB Defendants, against whom Plaintiff seeks a temporary restraining order, and informed him of Plaintiff's application for the temporary restraining order; and he advised me that he has no objection to the Court's granting of such a restraining order, to remain in effect pending the hearing on Plaintiff's application for a preliminary injunction.

DATED: February 4, 1977

Bernard T. King
BERNARD T. KING, ESQ.

BLITMAN AND KING
Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

Telephone: (315) 422-7111

VERIFIED COMPLAINT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.;

V E R I F I E D

C O M P L A I N T

Civil Action No.

77-CV-45

VERIFIED COMPLAINT.

ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

Plaintiff, by its attorneys, Blitman and King, for its Complaint alleges:

I. JURISDICTION OF THE COURT

1. This is a civil action seeking declaratory, injunctive and equitable relief. Plaintiff, on its own behalf and on behalf of its members, seeks: (1) a declaratory judgment pursuant to 28 U.S.C. §2201, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears; and (2) to enjoin (a) deprivation under color of a law of the State of New York, of a right secured by 49 U.S.C. §1609(c) to Plaintiff, its members and employees it is required by law to represent, and (b) a continuing breach of contract by certain of the Defendants. Plaintiff has no adequate remedy at law.

2. This action arises under 49 U.S.C. §1601 et seq., and 42 U.S.C. §1983. The jurisdiction of this Court is invoked under 28 U.S.C. §1331; 28 U.S.C. §1337; 28 U.S.C. §1343; 28 U.S.C. §2201; and the principles of pendant jurisdiction. The amount in controversy, exclusive of interest and costs, exceeds Ten Thousand Dollars ($10,000.00).

3. All of the Defendants reside in and the claims arise in the Northern District of New York. This court has venue pursuant to 28 U.S.C. §1391(b).

II. DESCRIPTION OF PLAINTIFF

4. Plaintiff is an unincorporated labor organization and the duly authorized collective bargaining representative of its members, who are employees, including bus operators, garage, shop and building maintenance employees, of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc. Plaintiff's members are affected by the acts of the Defendants sought to be enjoined in this action. Since Plaintiff can only act through its members, the actions of the Defendants which abridge the rights of Plaintiff's members, impede equally the rights of the Plaintiff.

III. DESCRIPTION OF THE DEFENDANTS

5. The Central New York Regional Transportation Authority (the "Authority") is a public benefit corporation created by Chapter 714 of the laws of 1970 of the State of New York ("Chapter 714").

6. The members of the Authority were appointed in accordance with §1328 of Chapter 714. Pursuant to §1328, the Authority is empowered to transact any business or exercise any power, by a majority of its members present at any meeting at which a quorum is in attendance. The members of the Authority, Defendants herein, are Royal O'Day, who is also Chairman of the Authority; John W. Stone, Jr., who is also Vice-Chairman of the Authority; Warren W. Frank, who is also Executive Director of the Authority; J. Gregory Merriam, who is also Secretary of the Authority; Dr. Kenneth G. Bartlett; Harold L. Fisher; Robert M. Gilmartin; Harold W. Orchard; and Leslie J. Parnell. These individuals, who are being sued individually and in their various representative capacities, are hereinafter referred to collectively as the "individual Centro Defendants."

7. The statutory powers of the Authority, set forth in §1331 of Chapter 714, include, inter alia, the following powers: (a) to sue and be sued; (b) to borrow money and issue negotiable bonds, notes and other obligations; (c) to enter into contracts and leases and to execute all instruments necessary or convenient; (d) to appoint a general manager and employees; (e) to enter into collective bargaining agreements with labor representatives, duly elected by employees of the Authority.

8. The special powers of the Authority, set forth in §1332 of Chapter 714, include the power to acquire, by purchase, gift, grant, transfer, contract or lease, or condemnation, any transportation facility.

9. The special powers of the Authority, set forth in §1332 of Chapter 714, include the power to cause any one or more of its powers, duties, functions, or activities to be exercised or performed by one or more wholly owned subsidiary corporations of the Authority. Pursuant to §1332, each such subsidiary corporation shall have all of the privileges and limitations of the Authority.

10. Pursuant to §1332 of Chapter 714, CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc. (herein collectively referred to as "Centro"), were, upon information and belief, incorporated as public benefit subsidiary corporations of the Authority in or about August of 1971.

11. Pursuant to §1332 of Chapter 714, the Directors of each said corporation are the same persons holding office as members of the Authority.

12. Centro manages and operates the public transportation facilities of, and acquired by, the Authority, in the Central New York counties of Onondaga, Oswego and Cayuga.

13. Both the Authority and Centro are empowered by §1332 of Chapter 714, (a) to enter into agreements with governmental bodies; (b) to apply for and receive grants of property, money, services and other assistance by any person, government or agency; and (c) to negotiate for such grants upon such terms and conditions as the Authority and/or Centro may determine to be necessary, convenient or desirable.

14. Defendants Robert Helsby, Joseph R. Crowley, and Ida Klaus, together constitute the New York State Public Employment Relations Board (herein referred to as "PERB"). Defendant Harold R. Newman is Director of Conciliation of PERB. Defendant Dana E. Eischen is the factfinder appointed by PERB to conduct a hearing concerning the present dispute between the Union and Centro over the terms of a new collective bargaining agreement, and to submit to the parties and PERB non-binding findings and recommendations as to settlement of the contract dispute. These individual Defendants, who are being sued in their representative capacities, shall be referred to collectively herein as the "PERB Defendants".

15. New York Civil Service Law §209, provides that PERB may appoint a factfinder who is empowered to make public recommendations for resolution of a collective bargaining dispute, in the absence of an agreement between the parties setting forth procedures to be invoked to resolve such a dispute.

IV. AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS AUTHORITY, CENTRO AND THE INDIVIDUAL CENTRO DEFENDANTS

16. This cause arises under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §1601 et seq. The jurisdic-

tion of this Court is invoked pursuant to 28 U.S.C. §1331 and 28 U.S.C. §2201. The amount in controversy, exclusive of interest and costs, exceeds Ten Thousand Dollars ($10,000.00).

17. This cause is for equitable relief; and for a declaratory judgment pursuant to 28 U.S.C. §2201, for the purpose of determining an actual controversy between the parties, as hereinafter more fully appears.

18. The Authority filed applications under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §1601 et seq. (the "Act"), for federal capital grants, application numbers NY-03-0058, and subsequently amended NY-03-0058; and NY-03-0059, to assist in the purchase of the assets of the Syracuse and Eastern Transit Corporation, and to assist in the purchase of buses, bus shelters and other equipment, and the construction of facilities, for operation of bus transportation systems in Onondaga, Cayuga and Oswego Counties, New York. Upon information and belief, the Authority has received in excess of 3 million dollars in federal grants for such purposes and to cover certain operating expenses. The Authority is eligible for an annual operating grant from the Urban Mass Transportation Administration, United States Department of Transportation, to cover certain operating expenses of CNY Centro, Inc. with respect to its providing of public transportation.

19. Section 13(c) of the Act, 49 U.S.C. §1609(c), requires, as a condition of grant assistance thereunder, that fair and equitable arrangements be made as determined by the United States Secretary of Labor, "to protect the interests of employees affected by such assistance."

20. The Act further provides that the contract for granting any such assistance shall specify the terms and conditions of the protective arrangements.

21. Pursuant to Section 13(c) of the Act, 49 U.S.C. §1609(c), on March 11, 1975, the Authority, Centro, and Plaintiff Division 580 entered into the so-called "13(c) Agreement", setting forth terms and conditions which protect the interests of Centro's employees. A copy of the 13(c) Agreement, which remains in effect at this time, is attached hereto and made a part hereof as Exhibit "A".

22. Paragraph 9 of the 13(c) agreement provides, inter alia, that either party may submit to binding arbitration, a dispute over the making or maintenance of a collective bargaining agreement, or the terms to be included in such an agreement.

23. Paragraph (16) of the 13(c) Agreement provides that if approval for assistance is granted under the Act, the terms and conditions of the 13(c) Agreement shall be made part of the contract of assistance between the Federal Government and the applicant for federal funds. Paragraph (16) further provides that the 13(c) Agreement shall be independently binding and enforceable by and upon the parties to it.

24. Plaintiff has abided by all of the terms of the 13(c) Agreement and has performed all of its obligations under the 13(c) Agreement.

25. Centro and Plaintiff, Division 580, were party to a collective bargaining agreement covering the employees of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc., which employees are Plaintiff's members, effective November 1, 1974 through November 1, 1976. That agreement has expired and Plaintiff and Centro have been engaged in negotiations for a new collective bargaining agreement.

26. Plaintiff and Centro have failed to reach agreement on a new collective bargaining agreement.

27. Plaintiff is entitled to submit the dispute over the terms of a new collective bargaining agreement to binding arbitration, pursuant to the §13(c) agreement.

28. Plaintiff, pursuant to paragraph 9(c) of the 13(c) Agreement, appointed an arbitrator and informed Centro of that appointment and of Division 580's intent to submit their contract dispute to arbitration. Centro refuses to participate in such arbitration, in violation of the section 13(c) Agreement.

29. At least thirty days has elapsed since the demand, claim or claims upon which this action is founded, were presented to Centro and the Authority, and they have refused to arbitrate the contract dispute.

30. The refusal of the Authority and Centro to arbitrate the dispute pursuant to the 13(c) agreement is, upon information and belief, authorized and directed by their individual respective members and directors, Defendants herein.

31. Plaintiff and its members are irreparably and immediately injured by the acts of the Defendants in that their rights under the §13(c) Agreement are being abrogated and denied; and by such acts the Defendants are denying Plaintiff's right to represent its members in collective bargaining. Plaintiff's members, by the acts of the Defendants, are being denied the right to be represented in collective bargaining by Plaintiff, and the right to have their interests as employees protected by the "fair and equitable arrangements" required by the Act, 49 U.S.C. §1609(c), and made for that purpose.

32. Plaintiff and its members have no adequate remedy at law. Monetary damages are inadequate to compensate Plaintiff

and its members.

33. Wherefore, Plaintiff demands:

(a) A declaratory judgment that the §13(c) agreement is a valid and enforceable agreement for binding arbitration of the dispute between Plaintiff, the Authority and Centro over the terms to be included in a collective bargaining agreement;

(b) A declaratory judgment that Plaintiff is entitled to have arbitration of the dispute over the terms and conditions of a new collective bargaining agreement, pursuant to the §13(c) agreement;

(c) Judgment directing the Authority, the Centro Defendants and the individual Centro Defendants, and all those under their direction and control, to take such steps as are necessary such that arbitration of the contract dispute can be commenced; and

(d) Judgment directing the Authority, Centro and the individual Centro Defendants to proceed to arbitration of the contract dispute in accordance with the §13(c) agreement, together with such other and further relief as the Court deems just and proper.

V. AS AND FOR A SECOND AND SEPARATE CAUSE OF ACTION AGAINST DEFENDANTS AUTHORITY, CENTRO AND THE INDIVIDUAL CENTRO DEFENDANTS

34. This cause arises under 49 U.S.C. §1601 et seq. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1337 and 28 U.S.C. §2201.

35. The Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §1601 et seq. (the "Act"), is an Act of Congress regulating commerce.

36. Plaintiff realleges the allegations set forth in paragraphs numbered "1" through "32" of this Complaint, inclusive, with the same force and effect as though the same were set forth in full.

37. Wherefore, Plaintiff requests relief as follows:

(a) A declaratory judgment that the §13(c) agreement is a valid and enforceable agreement for binding arbitration of the dispute between Plaintiff, the Authority and Centro over the terms and conditions of a collective bargaining agreement;

(b) A declaratory judgment that Plaintiff is entitled to have arbitration of the dispute over the terms and conditions of a new collective bargaining agreement, pursuant to the §13(c) agreement;

(c) Judgment directing the Authority, the Centro Defendants and the individual Centro Defendants, and all those under their direction and control, to take such steps as are necessary such that arbitration of the contract dispute can be commenced; and

(d) Judgment directing the Authority, Centro and the individual Centro Defendants to proceed to arbitration of the contract dispute in accordance with the §13(c) agreement, together with such other and further relief as the Court deems just and proper.

VI. AS AND FOR A THIRD AND SEPARATE CAUSE OF ACTION AGAINST DEFENDANTS AUTHORITY, CENTRO AND THE INDIVIDUAL CENTRO DEFENDANTS

38. This cause arises under 42 U.S.C. §1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343 and 28 U.S.C. §2201.

39. Plaintiff realleges the allegations set forth in paragraphs numbered "1" through "32" of this Complaint, inclusive, with the same force and effect as though the same were set forth in full.

40. The Authority and Centro are public employers under the New York Public Employees' Fair Employment Act, N.Y. Civil Service Law §200 et seq. (the "Taylor Law"). Plaintiff's members employed by Centro are public employees under the Taylor Law.

41. The Authority, Centro and the individual Centro Defendants are, upon information and belief, refusing to arbitrate, pursuant to the 13(c) Agreement, the contract dispute between the parties, on the asserted basis that to do so would be improper under the Taylor Law, and that only the dispute-resolution procedures of the Taylor Law would be proper to attempt to resolve the present contract dispute.

42. The dispute-resolution procedures of the Taylor Law include mediation and factfinding; both of those procedures do not result in a binding award by a neutral third party to resolve the dispute. Under the Taylor Law procedures, the final determination of the terms of a new collective bargaining agreement would be made unilaterally by the Authority and/or Centro, unless the parties reach voluntary agreement.

43. The Taylor Law, N.Y. Civil Service Law §209.2, specifically authorizes public employers "to enter into written agreements . . . setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration."

44. An agreement to arbitrate a contract dispute takes

precedence over the Taylor Law statutory procedures for dispute resolution.

45. The "Section 13(c)" agreement, between the Authority, Centro and Plaintiff, is an agreement "setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations" within the meaning of N.Y. Civil Service Law §209.2.

46. Martin L. Barr, Counsel to PERB, has issued an opinion, dated December 22, 1976, in which he states that the 13(c) Agreement "could properly be construed as an agreement authorized by the provisions of Civil Service Law §209.2," and concludes that:

> "If the parties have agreed pursuant to the provisions of the 13(c) agreement to submit their negotiations dispute to final and binding arbitration, such agreement is consistent with the Taylor Law and specifically authorized by Civil Service Law §209.2."

A copy of the opinion of December 22, 1976 is attached hereto and made part hereof as Exhibit "B".

47. By refusing to participate in arbitration of the contract dispute pursuant to the 13(c) agreement, the Authority, Centro and the individual Centro Defendants are, under color of State law, depriving Plaintiff and its members of their rights secured under the laws of the United States, in violation of 42 U.S.C. §1983. More particularly, Plaintiff and its members are being denied their right to be protected by fair and equitable arrangements required by 49 U.S.C. §1609(c).

48. Wherefore, Plaintiff demands:

(a) A declaratory judgment that the §13(c) agreement is a valid and enforceable agreement for binding arbitration of the dispute between Plaintiff, the Authority and Centro over the terms to be included in a collective bargaining agreement;

(b) A declaratory judgment that the §13(c) agreement constitutes "fair and equitable arrangements . . . to protect the interests of employees" within the meaning of 49 U.S.C. §1609(c).

(c) A declaratory judgment that the refusal of Defendants Authority, Centro and the individual Centro Defendants, to arbitrate the dispute pursuant to the §13(c) agreement, deprives the Plaintiff and its members of their right, under 49 U.S.C. §1609, to have their interests protected by fair and equitable arrangements, in violation of 42 U.S.C. §1983;

(d) Judgment enjoining the Authority, Centro, and the individual Centro Defendants, from depriving Plaintiff and its members of their rights under 49 U.S.C. §1609;

(e) Judgment directing the Authority, the Centro Defendants and the individual Centro Defendants, and all those under their direction and control, to take such steps as are necessary such that arbitration of the contract dispute can be commenced; and

(f) Judgment directing the Authority, Centro and the individual Centro Defendants to proceed to arbitration of the contract dispute in accordance with the §13(c) agreement, together with such other and further relief as the Court deems just and proper.

VII. AS AND FOR A FOURTH AND SEPARATE CAUSE OF ACTION AGAINST DEFENDANTS AUTHORITY, CENTRO AND THE INDIVIDUAL CENTRO DEFENDANTS

49. The jurisdiction of this Court is invoked pursuant to the principles of pendant jurisdiction.

50. Plaintiff realleges the allegations set forth in paragraphs numbered "1" through "32" of the Complaint, inclusive,

with the same force and effect as though the same were set forth in full.

51. Defendants Authority and Centro and the individual Centro Defendants have breached the §13(c) Agreement by refusing to proceed to arbitration of the contract dispute.

52. Wherefore, Plaintiff demands:

(a) Judgment directing the Authority, the Centro Defendants and the individual Centro Defendants, and all those under their direction and control, to take such steps as are necessary such that arbitration of the contract dispute can be commenced; and

(b) Judgment directing the Authority, Centro and the individual Centro Defendants to proceed to arbitration of the contract dispute in accordance with the §13(c) agreement, together with such other and further relief as the Court deems just and proper.

VIII. AS AND FOR A SEPARATE CAUSE OF ACTION AGAINST THE PERB DEFENDANTS

53. This cause arises under 42 U.S.C. §1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343 and 28 U.S.C. §2201.

54. Plaintiff realleges the allegations set forth in paragraphs numbered "1" through "32" and "40" through "46" of the Complaint, inclusive, with the same force and effect as though the same were set forth in full.

55. By letter dated November 24, 1976, Defendant Warren Frank requested PERB to appoint a fact-finding board.

56. Thereafter, PERB appointed Defendant Dana E. Eischen as factfinder. Defendant Eischen has scheduled a fact-finding hearing for February 9, 1977.

57. Although Plaintiff's attorneys have informed both PERB representatives and Defendant Eischen of the 13(c) agreement providing for arbitration of a contract dispute, and of Plaintiff's intention to proceed to arbitration under that agreement to achieve a final and binding settlement of the dispute, PERB and Defendant Eischen will, unless restrained, conduct a factfinding hearing on February 9, 1977.

58. By directing the parties to proceed to a factfinding hearing on February 9, 1977, the PERB Defendants are, under color of State law and in violation of 42 U.S.C. §1983, depriving Plaintiff and its members of their rights secured under 49 U.S.C. §1609(c), to wit, the right to submit the contract dispute to binding arbitration pursuant to the §13(c) agreement.

59. Wherefore, Plaintiff demands:

(a) A declaratory judgment that the 13(c) agreement is a valid and enforceable agreement for binding arbitration of the dispute between Plaintiff, the Authority and Centro over the terms and conditions of a collective bargaining agreement;

(b) A declaratory judgment that the 13(c) agreement is an agreement "setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations", within the meaning of and authorized by New York Civil Service Law §209.2;

(c) A declaratory judgment that the §13(c) agreement constitutes "fair and equitable arrangement . . . to protect the interests of employees" within the meaning of 49 U.S.C. §1609(c);

(d) A declaratory judgment that the conduct of a factfinding hearing by the PERB Defendants would deprive Plaintiff and its members of their right, under 49 U.S.C. §1609, to have their interests protected by fair and equitable arrangements, in violation of 42 U.S.C. §1983;

(e) Judgment enjoining the PERB Defendants from depriving Plaintiff and its members of their rights under 49 U.S.C. §1609;

(f) Judgment enjoining the PERB Defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them from causing the statutory impasse resolution procedures in New York Civil Service Law §209 to be commenced or conducted, and from commencing or conducting a factfinding hearing over the contract dispute described herein; and

(g) That pending the final hearing and determination of this action, a preliminary injunction issue restraining the PERB Defendants, their officers, employees, agents or servants from causing the statutory impasse resolution procedures in New York Civil Service Law §209 to be commenced or conducted, and from commencing or conducting a factfinding hearing over the contract dispute described herein; together with such other and further relief as the Court deems just and proper.

Yours, etc.,

BLITMAN AND KING

By: Bernard T. King
Bernard T. King, Esq.

Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

Telephone: (315) 422-7111

VERIFIED COMPLAINT.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

GEORGE WRIGHT, being duly sworn, deposes and says that he resides at 5548 Bear Road, North Syracuse, New York; that he is the President of Division 580, Amalgamated Transit Union, AFL-CIO, the Plaintiff herein; that he has read the foregoing Complaint and knows the contents thereof, and the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

George Wright
GEORGE WRIGHT

Sworn to before me this
14th day of February, 1977.

Notary Public

Exhibit A – Agreement Pursuant to Section 13(c) attached to Verified Complaint.

AGREEMENT PURSUANT TO SECTION 13 (c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

WHEREAS, the Central New York Regional Transportation Authority of Syracuse, New York ("Public Body") has filed an application under the Urban Mass Transportation Act of 1964, as amended ("Act") # NY-03-0058 for a capital grant to assist in the purchase of the assets of the Syracuse and Eastern Transit Corporation and subsequently amended # NY-03-0058 to include the following (original and amended, more fully described in the project application ("Project"):

Onondaga County #NY-03-0058 Amended
(35) Replacement Buses
(45) Bus Shelters & (500) Bus Stop Signs
Transportation Information Center
Shop Equipment and Service Vehicles
(30) Radios and (30) Fareboxes
SIMS Training
RUCUS
(10) Park and Ride Buses
(10) Commuter Subscription Buses
(10) CBD Circulation Buses
(1) 1970 53 Passenger Bus to be acquired from Syracuse & Eastern Transit Corporation

Cayuga County #NY-03-0058 Amended
(10) Buses - size to be determined
(40) Bus Shelters
Radios and Fareboxes
(1) Supervisory Vehicle

Oswego County #NY-03-0058 Amended
(7) Buses
Bus Shelters
Storage Facility
Radios

;and

WHEREAS, the Central New York Regional Transportation Authority of Syracuse, New York ("Public Body") has also filed an application under the Urban Mass Transportation Act of 1964, as amended ("Act") # NY-03-0059, for a capital grant to assist in purchasing land, construct a garage and office facility, and purchase garage and office equipment for its transit operations in Cayuga County, as more fully described in the project application ("Project"); and

WHEREAS, employees of CNY Centro, Inc. ("Centro"), a public benefit subsidiary corporation operating the transit system for the Public Body, are represented by Local Division 580, Amalgamated Transit Union AFL-CIO ("Union"); and

WHEREAS, sections 3(e)(4) and 13(c) of the Act require, as a condition of assistance thereunder, that fair and equitable arrangements be made as determined by the Secretary of Labor, "to protect the interests of employees affected by such assistance"; and

WHEREAS, the parties have agreed upon the following arrangements as fair and equitable;

NOW, THEREFORE, it is agreed that in the event this Project is approved for assistance under the Act, the following terms and conditions shall apply:

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not in any way adversely affect employees covered by this agreement.

BEST COPY AVAILABLE

Exhibit A — Agreement Pursuant to Section 13(c) attached to Verified Complaint.

(2) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits not previously vested may be modified by collective bargaining and agreement by the operator of the transit system and the Union to substitute rights, privileges and benefits of equal or greater economic value.

(3) The collective bargaining rights of employees represented by the Union, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements,(as provided by applicable laws,) policies and/or existing collective bargaining agreements shall be preserved and continued. The Public Body agrees that it will bargain collectively with the Union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the Union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining with a private employer.

(4) Any employee covered by this agreement who is laid off or otherwise deprived of employment, or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time

during his employment as a result of the Project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangements (attached hereto and made a part hereof as Exhibit "A"); provided, however, that nothing in Exhibit "A" shall be deemed to supersede or displace any other provisions of this agreement, and in the event of any conflict or inconsistency between them, the other provisions of this agreement shall control.

(5) The Public Body, through Centro, shall be financially responsible for the application of these conditions and will make the necessary arrangements with the Union to provide for a mutually satisfactory claims-handling procedure under this agreement. In the case of an adversely affected employee, Centro will either honor the claim by restoring the claimant to his former position with full back pay and allowances, or give notice to the Union of its basis for failing to honor such claim, giving reasons therefor. In the event Centro fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice of its desire to pursue such procedures. Within ten (10) days from the receipt by Centro of such notice, the parties shall exchange such factual information as may be available to them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third parties such additional factual information as may be relevant. As soon as practicable thereafter, the parties shall meet and attempt to agree upon the proper disposition of the claim. If no such agreement is reached, and Centro decides to reject the claim, it shall give written notice of its final rejection of the claim, detailing its reasons therefor. In the event the claim is so rejected by Centro, the claim may be processed to arbitration as provided by paragraph (9) of this agreement. Throughout the claims-handling and arbitration procedures, Centro shall have the burden of affirmatively establishing that any deprivation of employment, or other worsening of employment position, has not been a result of the Project, by proving that only factors other than the Project affected the employee.

(6) Any employee in the bargaining unit represented by the Union who has been terminated or laid off for lack of work, shall be granted priority of employment or reemployment to fill any vacant position on the transit system for which he is, or by training or re-training can become, qualified. In the event training or re-training is required by such employment or reemployment, Centro shall provide or provide for such training or re-training at no cost to the employee, and such employee shall be paid, while training or re-training, the salary or hourly rate of his former job classification or the training rate of the classification for which he is training, whichever is higher.

(7) Employees of Centro covered by this agreement will be given the first opportunity for employment in any new jobs, included in the bargaining unit or comparable to those included in the bargaining unit, created as a result of the Project, for which they are, or by training or re-training can become, qualified. All such jobs shall be filled in accordance with seniority and allocated on a fair and equitable basis under arrangements to be mutually determined by Centro and the Union prior to the filling of such jobs, or by arbitration at the request of either party, if such arrangements are not agreed upon prior to such date. Centro

Exhibit A — Agreement Pursuant to Section 13(c) attached to Verified Complaint.

will not tender such jobs to any other individual or individuals so long as there are members of the bargaining unit who are qualified, or after a reasonable training period can become qualified, and are willing to bid these jobs.

Centro or other operator of the transit system, will give written notice to the Union prior to commencing any new operations which create additional jobs in the bargaining unit, and the parties shall thereafter meet at mutually agreeable times to negotiate concerning the details of a preferential employment opportunity plan, and the wages, hours, and working conditions for employees assigned to such new operations. Any agreement reached upon such provisions shall be executed by all parties and made a part of this agreement. In the event the parties are unable to agree upon such provisions, the dispute may be submitted to arbitration as hereinafter provided.

(8) In the event Centro contemplates any change in its organization or operations which will result in the dismissal or displacement of employees, or rearrangement of the working forces represented by the Union as a result of the Project, Centro shall give reasonable written notice of such intended change to the Union. Such notice shall contain a full and adequate statement of the proposed changes to be effected, including an estimate of the number of employees of each classification affected by the intended changes. Thereafter, within thirty (30) days from the date of said notice, Centro and the Union shall meet for the purpose of reaching agreement with respect to the application of the terms and conditions of this agreement to the intended changes. Any such change involving a dismissal, displacement, or rearrangement of the working forces represented by the Union shall provide for the selection of forces from the employees represented by the Union on bases accepted as appropriate for application in the particular case; and any assignment of employees made necessary by the intended changes shall be made on the basis of an agreement between Centro and the Union. In the event of a failure to agree, the dispute may be submitted to arbitration by either party pursuant to paragraph (9) of this agreement. In any such arbitration, the terms of this agreement are to be interpreted and applied in favor of providing employee protections and benefits no less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act.

(9) In the case of any labor dispute where collective bargaining does not result in agreement, the same may be submitted at the written request of either party to a board of arbitration, composed of three (3) persons, to be selected as provided by the collective bargaining agreement then in effect, if any, otherwise the same may be submitted at the written request of either party to a board of arbitration composed of three (3) persons as hereinafter provided, one to be chosen by Centro, one to be chosen by the Union, and the two thus selected to select a third disinterested arbitrator; the findings of the majority of said board of arbitration to be final and binding on the parties thereto, except in the event of a tripartite arbitration, in which case the decision of the neutral member shall govern.

Each party shall appoint its arbitrator within ten (10) days after notice of submission to arbitration has been given. Should the two arbitrators selected by the parties be unable to agree upon the selection of the third arbitrator within ten (10)

days from the date of appointment of the second-named arbitrator, then either arbitrator may request the American Arbitration Association to furnish a list of seven (7) persons from which the third arbitrator shall be selected. The arbitrators appointed by the parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustment of grievances, any claim, difference, or controversy arising out of or by virtue of any of the provisions of this agreement for the protection of employees affected by the Project.

The salaries and expenses of the third arbitrator shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

Nothing in this paragraph shall be construed to enlarge or limit the right of either party to utilize, upon the expiration of any collective bargaining agreement, or otherwise, any economic measures that are not inconsistent or in conflict with any collective bargaining agreement or applicable law.

(10) Nothing in this agreement shall be construed as an undertaking by the Union or the employees covered by this agreement to forego any rights or benefits under any other agreement or under any provision of law.

(11) All employees represented by the Union shall continue to be employed on the transit system by any successor-employer in the management and operation of the system, and the employment and seniority rights of all such employees shall be maintained and continued in accordance with the seniority rosters in effect on the date of acquisition of the system by the successor-employer. All persons employed under the provisions of this paragraph shall be appointed to comparable positions on the transit system without examination, and such employees shall be credited with their years of service for purposes of sick leave, seniority, vacations and pensions in accordance with company records and applicable collective bargaining agreements. The successor-employer shall assume, or arrange for the assumption of, the obligations of Centro with regard to wages, salaries, hours, working conditions, sick leave, health and welfare, and pension or retirement provisions for employees. No employee of the Centro shall suffer any worsening of his wages, seniority, pension, sick leave, vacation, health and welfare insurance, or any other benefits by reason of his transfer to a position with the successor-employer.

(12) The term "Project", as used in this agreement, shall not be limited to the particular facility assisted by federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are traceable to the assistance provided, whether they are the subject of the grant contract, reasonably related thereto, or facilitated thereby. The phrase "as a result of the Project" shall, when used in this agreement, include events occurring in anticipation of, during, and subsequent

Exhibit A — Agreement Pursuant to Section 13(c) attached to Verified Complaint.

to the Project.

(13) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered or changed in any respect whatsoever by reason of the arrangements made by or for the Public Body to manage and operate the system. Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management or operation of the transit system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

(14) The employees in the bargaining unit represented by the Union shall continue to receive coverage under Social Security, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(15) In the event any provision of this agreement is held to be invalid, or otherwise unenforceable under the federal, State, or local law, such provision shall be renegotiated for purpose of adequate replacement under section 13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, either party may invoke the jurisdiction of the Secretary of Labor, or arbitration pursuant to paragraph (9) of this agreement, to determine substitute fair and equitable employee protective arrangements which shall be incorporated in this agreement and any other appropriate action, remedy, or relief.

(16) If this Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the Federal Government and the applicant for federal funds, provided, however, that this agreement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties hereto, in accordance with its terms; nor shall the collective bargaining agreement between the Union and the operator of the transit system merge into this agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their respective duly authorized representatives this 11 day of March, 1975.

CENTRAL NEW YORK REGIONAL
TRANSPORTATION AUTHORITY

By Warren M. Frost Exec. Dir.

CNY CENTRO, INC.

By Warren M. Frost Pres.

LOCAL DIVISION 580
AMALGAMATED TRANSIT UNION AFL-CIO

By Joseph P. Welch
Business Agent L.D. 580

Exhibit A — Agreement Pursuant to Section 13(c) attached to Verified Complaint.

The employee protective arrangements for the Project to which this Exhibit "A" applies shall include the following rights, privileges, and benefits to the extent applicable to any covered employee:

(1)(a) Whenever an employee retained in service is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee" and shall be paid a monthly "displacement allowance", to be determined in accordance with this paragraph. Said displacement allowance shall be paid during the protective period following the date on which the employee is first displaced, so long as the employee is unable, in the normal exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation of the position from which he was displaced.

(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceeding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be further adjusted to reflect any subsequent wage adjustments increasing employee compensation. If the displaced employee's compensation in his current position is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent wage adjustments), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. It is not intended that the provisions of this paragraph shall affect in any way the retirement on pension or annuity rights and privileges of any employee. If a displaced employee fails to exercise his seniority rights to secure another position available to him, which does not require a change in his place of residence as hereinafter defined, to which he is entitled under the working agreement and which carries a wage rate and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(2)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, he shall be considered a "dismissed employee", and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. This dismissal allowance shall be first paid each dismissed employee on the 30th day following the day on which he is "dismissed", and continue payable monthly for the following periods of time:

Employee's length of service prior to adverse effect	Period of payment
1 day to 6 years	equivalent period
6 years or more	6 years

Exhibit A — Agreement Pursuant to Section 13(c) attached to Verified Complaint.

During the 6-year period following the date on which the employee is deprived of employment, the monthly dismissal allowance shall be equivalent to 1/12 of the compensation received by him in the last twelve (12) months of his employment in which he earned compensation (adjusted to reflect subsequent wage adjustments increasing compensation) prior to the date on which he was first deprived of employment as a result of the Project.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project and he is unable to obtain by the exercise of his seniority rights another position; or, when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project; or, as a result of the exercise of seniority rights by other employees brought about as a result of the Project. Any such deprivation of employment which occurs as a result of an agreement reached or arbitration award rendered in accordance with these employee protective arrangements which require a selection from, or reassignment of, the working forces, shall not be deemed to be any less a result of the Project by reason of such agreement or award. In the absence of proper notice of an intended change, and an agreement or arbitration award specifying arrangements for the selection from, or reassignment of, the working forces, as required by the protective conditions applicable to the Project, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Public Body informed as to his current address and the current name and address of any other person by whom he may be regularly employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of this agreement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the working agreement, and such employee may be required to return to service of his former employer for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, as hereinafter defined, if his return does not infringe upon the employment rights of other employees under the working agreement.

(f) When an employee who is receiving a dismissal allowance returns to service, said allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of

such reemployment, he shall be entitled to all other applicable provisions of this agreement.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his Union representatives, and his former employer, shall agree upon a procedure by which the Public Body shall be currently informed of the wages earned by such employee in employment other than with his former employer, and the benefits received.

(h) The dismissal allowance shall cease prior to its normal expiration date, as described in paragraph (2)(a) above, in the event of the failure of the employee without good cause to return to service in accordance with the working agreement by the exercise of his seniority rights to secure an available position in his former classification, or for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, as hereinafter defined, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with the working agreement.

(3) In determining length of service of a displaced or dismissed employee for purposes of this agreement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or displacement allowance as if he were continuing to perform services in his former position.

(4) No employee receiving a dismissal or displacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including without limitation group life insurance, hospitalization, and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Social Security, Workmen's Compensation and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(5) No employee shall be entitled to an allowance under paragraphs (1) or (2) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(6)(a) Any dismissed or displaced employee, who is retained in service or who is later restored to service after being entitled to receive a dismissal or displacement allowance, and who is required to change the point of his employment as hereinafter defined, in order to retain or secure active employment with his employer and is thereby required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the travelling expense for himself and his immediate family, and for his own actual wage

loss during the time necessary for such transfer, and for a reasonable time thereafter (not to exceed five (5) working days) used in securing a place of residence in his new location. The exact extent of the responsibility of the Public Body under this paragraph, and the ways and means of transportation shall be agreed upon in advance between the Public Body and the employees affected, or their Union representatives. Claims under this paragraph must be submitted to the Public Body within ninety (90) days after they are incurred.

(b) If any such employee is furloughed within three (3) years after changing his point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Public Body shall assume the expense of moving his household and other personal effects under the provisions of paragraph (a) hereof.

(c) Except as otherwise provided in this paragraph, changes in place of residence, subsequent to the initial changes caused by the action taken pursuant to the Project, which do not result from said action but grow out of the normal exercise of seniority, shall not be considered within the purview of the provisions of this paragraph.

(7) (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the Public Body (or who is later restored to service after being entitled to receive a dismissal allowance) and who is required to change the point of his employment, by a distance of twenty (20) straight line miles in order to retain or secure active employment with his employer, within his protective period as a result of the Project, and is, thereby, required to move his place of residence; provided, however, that these conditions shall not apply where the change of the point at which the employee is employed results in bringing that point nearer his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Public Body for any loss suffered in the sale of his home for less than its fair market value, such loss to be paid within thirty (30) days of the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the transaction of sale, so as to be unaffected thereby. The Public Body shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person. It is the intent of this paragraph that the fair market value so determined and to be received by the employee, is not to be reduced by any expenses incident to the closing of the transaction of sale of home, such as loan discount, loan closing costs, preparation of abstract, or deed of sale, and the employee will be made whole for any such expense involved.

If the employee is under a contract to purchase his home, the Public Body shall protect him against loss under such contract and, in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling

occupied by him as his home, the Public Body shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are made subsequent to the initial changes caused by the Project, and which grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(c) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Public Body within one (1) year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or his Union representative, and the Public Body. In the event they are unable to agree, the dispute or controversy may be referred by the Public Body or the Union to a board of competent real estate appraisers, selected in the following manner: one to be selected by the representatives of the employee, and one by the Public Body, and these two, if unable to agree within thirty (30) days upon a valuation, shall endeavor by agreement within ten (10) days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local real estate board or commission, or comparable body, to designate within ten (10) days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and binding. The salary and expenses of the neutral appraiser, including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(8) A dismissed employee entitled to protection under this Exhibit "A" may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this agreement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936.

(9) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions, shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(10) If any employer of the employees covered by this

Exhibit A — Agreement Pursuant to Section 13(c) attached to Verified Complaint.

Exhibit "A" shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of deprivi[illegible] an employee of benefits to which he should be entitled under this Exhibit as an employee affected by the Project, the provisions of this agreement shall apply to such employee as of the date when he was so affected.

Exhibit B – Opinion, dated 12-22-76 attached to Verified Complaint.

BOARD MEMBERS
ROBERT D. HELSBY
CHAIRMAN
JOSEPH R. CROWLEY
~~[illegible]~~

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

COUNSEL
MARTIN L. BARR

December 22, 1976

Bernard T. King, Esq.
Blitman and King
500 Chamber Building
351 South Warren Street
Syracuse, N.Y. 13202

RE: CNY Centro, Inc. and Amalgamated Transit Union, Division 580

Dear Mr. King:

This is to reply to your letter of December 15 in which you ask whethercertain provisions of the agreement entered into between Central New York Regional Transportation Authority, CNY Centro, Inc. and Local Division 580, Amalgamated Transit Union, AFL-CIO, pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964 could constitute an agreement authorized by Section 209.2 of the Civil Service Law.

In particular you make reference to Section 9 of said agreement which provides that in the case of any labor dispute where collective bargaining does not result in agreement, the same may be submitted to final and binding arbitration. The term "labor dispute" is defined as including "any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements . . .".

DEC 24 1976

Exhibit B — Opinion, dated 12-22-76 attached to Verified Complaint.

Civil Service Law §209.2 provides in part:

> "Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the Board to render assistance . . .".

It is my opinion that a 13(c) agreement could properly be construed as an agreement authorized by the provisions of Civil Service Law §209.2. That statute specifically authorizes a public employer and an employee organization to agree to submit bargaining issues to arbitration. Such an agreement between a public employer and an employee organization will establish alternative impasse procedures for the parties to the agreement.

It should be understood that the Taylor Law is applicable to the negotiations disputes between CNY Centro, Inc. and Division 580, Amalgamated Transit Union, since CNY Centro, Inc. is a public employer and the employees in question are public employees, within the meaning of the Taylor Law. It should also be understood that I do not purport to interpret the 13(c) agreement to the extent of defining the parties' obligations thereunder. It is my conclusion that, if the parties have agreed pursuant to the provisions of the 13(c) agreement to submit their negotiations dispute to final and binding arbitration, such agreement is consistent with the Taylor Law and specifically authorized by Civil Service Law §209.2.

This opinion is advisory only, since binding determinations are restricted by statute to the Board in actual cases presented to it.

Very truly yours,

Martin L. Barr

Martin L. Barr
Counsel

MLB:ap

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Civil Action No.

DIVISION 580, AMALGAMATED TRANSIT
UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

77-CV-45

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Indiv[illegible]y and as Member of Central New York Reg[illegible]ansportation Authority, and as Director of CN[illegible]ro, Inc., Centro of Oswego, Inc., and Centro [illegible]ayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

AFFIDAVIT IN OPPOSITION TO ORDER
TO SHOW CAUSE & TEMPORARY RESTRAINING ORDER

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

****

*STATE OF NEW YORK * S.S.*
*COUNTY OF ONONDAGA**

****

BARRY M. SHULMAN, being duly sworn, deposes and says:

FIRST: That he is an attorney duly licensed to practice law in the United States District Court for the Northern District of New York and that he is a member of the Law Offices of Axenfeld, Webb, Marshall, Bersani & Scolaro, counsel to the CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY.

SECOND: That he makes this Affidavit on behalf of such CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, it's subsidiary corporations, CNY CENTRO, INC., CENTRO OF CAYUGA, INC., and CENTRO OF OSWEGO, INC., and further on behalf of those individuals named herein who are members of the Board of such CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY and as Directors of said subsidiary corporations.

THIRD: That the said CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY and the said subsidiary corporations, hereinafter referred to as "AUTHORITY", "CENTRO", "CENTRO OF CAYUGA", and "CENTRO OF OSWEGO", respectively, are State Agencies and instrumentalities and have the powers and limitations set forth in Title 11-D of the Public Authorities Law of the State of New York. That a copy of such enabling legislation is annexed hereto as Exhibit "A".

FOURTH: That the bases for this Affidavit as will be more specifically hereinafter set forth, are:

A) That a temporary Restraining Order should not be granted under Rule 65 of the Federal Rules, in that irreperable injury, loss or damage will not result to the Plaintiff herein in the event that the relief herein sought by Plaintiff is not granted.

B) That the proceeding to fact-finding under the applicable provisions of the Civil Service Law of the State of New York (hereinafter referred to as the Taylor Law), specifically provides fact-finding as a step to be taken for the resolution of disputes in the course of collective negotiations (Civil Service Law Section 209 (3) (b), but that the determination of the fact-finder is not binding on either party.

C) That the alleged 13(c) Agreement annexed to the Plaintiff's Complaint is not the 13(c) Agreement currently in effect between the parties hereto.

D) That the 13(c) Agreement which the parties have executed and which is presently in effect contains significantly different provisions regarding the requirement to arbitrate.

E) That the basis for a 13(c) Agreement pursuant to Federal statutory law, is the protection of the rights of employees of transportation authorities only in the event that they are adversly effected by a Federal, capital or operating grant.

F) That the action herein being against an agency of the State of New York violates the 11th amendment of the United States Constitution.

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

G) That the 13(c) Agreement annexed to Plaintiff's Complaint, even if it had been the Agreement currently in effect, between the parties, does not mandate arbitration herein in that it only takes effect after contract negotiations have terminated and if the labor dispute arises out of an adverse effect against an employee by virtue of a Federally funded project.

H) That there is no other contract mandating arbitration between the Plaintiff and Defendants appearing herein except for the provision in a labor contract between such parties solely regarding the grievance arbitration.

I) That Plaintiff herein has waived it's right to the application which it is seeking herein, having already voluntarily submitted to the provisions of the Taylor Law and having consented to the appointment of a fact-finder and having participated in mediation under the Taylor Law.

J) That there is no Federal jurisdiction herein in that this is a matter of the interpretation of a contract between a State Agency and it's Labor Union, pursuant to the provisions of the Taylor Law and that there is therefore no Federal question involved.

FIFTH: That the Plaintiff herein and the Authority, and it's said subsidiary corporations are controlled in their labor negotiations by the Taylor Law (Section 200 et seq. of the New York State Civil Service Law); and that a copy of the applicable provision of Section 209 (2 & 3) annexed hereto as Exhibit "B", and that the heading of such Section 209 states; "Resolutions of Disputes in the Course of Collective Negotiations (emphasis is added).

SIXTH: That effective November 1, 1974, Plaintiff herein entered into an Agreement with the Authority's said subsidiary corporations, which agreement set forth the labor contract between the parties thereto from such date and until the 31st day of October, 1976.

SEVENTH: That prior to such termination date, the parties thereto met on several occassions in an attempt to negotitate a labor contract to commence on November 1, 1976, for a two (2) year period.

EIGHTH: That because the parties thereto could not reach agreement in regard to such a new labor contract, both parties thereto sought the appointment of a mediator.

NINTH: That annexed hereto as Exhibit "C" is a Mailgram from Joseph P. Welch, Business Agent of Plaintiff, and Warren H. Frank, President of CENTRO, jointly requesting that the Public Employees Relations Board (PERB), the State Agency charged with the administration of the Taylor Law, appoint a mediator; such Mailgram stating:

> *Contract negotiations have reached an impasse and by agreement between CNY Centro, Inc. and Local Division 580 of the Amalgamated Transit Union, we respectfully request that we received (sic) the assistance of a mediator, if possible by Thursday, October 28, 1976.*

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

TENTH: That such request in Exhibit "C", annexed hereto, is in conformance with the provisions of the Civil Service Law Section 209 (3) (a), as annexed hereto in Exhibit "B".

ELEVENTH: That the parties to such request Plaintiff herein and those Defendants appearing herein clearly indicates their chosen avenue of approach which was to submit to Taylor Law impasse procedures and that at no time prior to or including the period of time during said mediation, were 13(c) arguments such as are raised herein ever raised.

TWELFTH: That the parties hereto met with a mediator appointed by PERB on the dates of October 29, 1976, October 30, 1976 and November 5, 1976, and that mediation under the Taylor Law took place with the approval of all parties in attendance, including Plaintiff herein.

THIRTEENTH: That mediation having failed to bring the parties to agreement, the Authority and it's subsidiary corporations requested the appointment of a fact-finder, again all in accordance with the provisions of Section 209 (3) (b), and that annexed hereto as Exhibit "D" is the notice to all parties herein by PERB letter dated December 1, 1976, of the appointment of attorney Dana E. Eischen as fact-finder.

FOURTEENTH: That a date for fact-finding was thereafter set for the 21st day of December; but that on December 13, 1976, only eight (8) days before the fact-finding was to take place, Bernard T. King, as attorney for Plaintiff herein, indicated for the first time to your deponent, his unwillingness to permit his client to attend fact-finding, by reason of alleged provisions in a Section 13(c) Agreement. That such letter of Mr. King is annexed hereto as Exhibit "E".

FIFTEENTH: That said letter of Mr. King quotes in part a provision of a 13(c) Agreement dated March 11, 1975.

SIXTEENTH: That such quote taken out of context was used by attorney Martin Barr, an attorney employed by PERB, as the basis for a letter annexed to Plaintiff's Complaint herein, but that such quotation is incomplete, leaves out significant words which bear directly on the matter herein, and as hereinafter set forth, refer to a 13(c) Agreement which pre-dated a different 13(c) Agreement pursuant to which the parties herein are bound.

SEVENTEENTH: That thereafter your deponent notified PERB of his objections to the position assumed by Mr. King and that your deponent again requested that fact-finding proceed.

EIGHTEENTH: That on December 17, 1976, said Dana E. Eischen, fact-finder, notified both parties hereto that an adjourned date for fact-finding was scheduled for January 24, 1977, and that said letter is annexed hereto as Exhibit "F".

NINETEENTH: That your deponent and his said clients then prepared for such fact-finding on January 24, 1977.

TWENTIETH: That said date of January 24, 1977 is a Monday. That on the Friday before, January 21, 1977, Mr. King, upon

information and belief, consented to fact-finding taking place, but asked for an adjourned date to February 9, 1977 to suit his convenience, and that on the 21st day of January, 1977, a letter annexed hereto as Exhibit "G", was forwarded to Mr. King and to your deponent by fact-finder, Eischen, stating:

> *"Confirming our recent telephone conversations, the fact-finding hearing set forth for January 24, 1977 has been adjourned at the request of Mr. King, who has an unanticipated scheduling conflict. This matter shall now go forward at 10:00 A.M., Wednesday, February 9, 1977."*

TWENTY-FIRST: That your deponent and his clients were likewise prepared to proceed to fact-finding on such date.

TWENTY-SECOND: That Mr. King, on behalf of his client, even if the bringing of this motion were appropriate has delayed for such a lengthy period of time after having originally consented to proceeding under the Taylor Law, as to be unconscienable and as to directly injure the Authority, it's subsidiary corporations and even the members of the Plaintiff's Union.

TWENTY-THIRD: That the original fact-finding was scheduled in December, 1976, but that no motion to prevent it was made until February, 1977.

TWENTH-THIRD: That annexed hereto as Exhibit "H" is the Affidavit of WARREN WOODRUFF, General Manager of said subsidiary corporations, indicating the degree of hostility which has surfaced merely because of the delay in contract negotiations.

13(c) AGREEMENT WHICH WAS ANNEXED TO PLAINTIFF'S PAPERS IS NOT CURRENT 13(c) AGREEMENT BETWEEN PARTIES.

TWENTY-FOURTH: That annexed to Plaintiff's Complaint is a 13(c) Agreement executed between Plaintiff and Defendants appearing herein on March 11, 1975, and that the Plaintiff herein alleges such Agreement as that 13(c) Agreement currently existing between the parties hereto.

TWENTY-FIFTH: That on the 23rd day of July, 1975, a "National 13(c) Agreement" was entered into under the auspices of the United States Department of Labor between the American Public Transit Association on behalf of authorities such as the Central New York Regional Transportation Authority, and by D. V. Maroney, Jr., President of the Amalgamated Transit Union, AFLCIO. A copy of such National 13(c) Agreement is annexed hereto as Exhibit "I".

TWENTY-SIXTH: That paragraph "15" of this Agreement sets forth limitations on arbitration in the event of a "labor dispute" limiting "labor dispute" to "the protection afforded by this Agreement or with respect to the interpretation, application or enforcement of the provisions of this Agreement"; and that the definition of "labor dispute" as advanced by Plaintiff in said March 11, 1975 13(c) Agreement, was not perpetuated in the National 13(c) Agreement.

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

TWENTY-SEVENTH: That on August 11, 1975, the Central New York Regional Transportation Authority, on behalf of its subsidiary corporations, adopted the National 13(c) Agreement for purposes of future Federal grants and that a copy of said letter of August 11, 1975 is annexed hereto as Exhibit "J".

TWENTY-EIGHTH: That thereafter and on the 15th day of August, 1975, Plaintiff herein endorsed the said National 13(c) Agreement and requested that it be made a party thereto and that the letter of August 15, 1975 signed by Business Agent Jos ph P. Welch, and directed to Mr. Warren H. Frank, as Executive Director of the Authority, is annexed hereto as Exhibit "K".

TWENTY-NINTH: That as recently as October 27, 1976, the Amalgamated Transit Union by D. V. Maroney, Jr., as International President, requested certification of an operating grant to the Central New York Regional Transportation Authority "on behalf of the National Section 13(c) Employee Protection Agreement by Central New York Regional Transportation on August 11, 1975 and by Amalgamated Transit Union Local Union 580, on August 12, 1976, a copy of which are enclosed."

THIRTIETH: That therefore, the rights as between the parties in regard to 13(c) protections should be judged by this Court on the basis of such National 13(c) Agreement and not on the basis of the 13(c) Agreement annexed to Plaintiff's Complaint.

13(c) AGREEMENT NOT APPLICABLE TO CONTRACT NEGOTIATIONS BEFORE THIS COURT.

THIRTY-FIRST: That the only provision in the labor agreement between Plaintiff and Defendants appearing herein regarding arbitration, is Section 49 thereof, a copy of which is annexed hereto as Exhibit "L"; and that such provision requires only grievance arbitration and not interest arbitration or the arbitration to supplant contract negotiations.

THRITY-SECOND: That the term "13(c)" derives from Section 13(c) of the Urban Mass Transportation Administration Act of 1964 as amended (49 U.S.C. 1609(c)); and that a copy of such statute is annexed hereto as Exhibit "M".

THIRTY-THIRD: That the purpose of a 13(c) Agreement as set forth in 49 U.S.C. 1609(c), is to preserve certain rights and privileges, to continue collective bargaining rights, to protect individual employees against a worsening of their position, to insure employment of acquired systems and to train and re-train employees, all of whom might be affected by a Federal, capital or operating grant.

THIRTY-FOURTH: That the entire concept of a 13(c) Agreement is not to supercede State laws and mandate arbitration where no such arbitration previously was mandated, but rather to mandate arbitration in the event of a labor dispute which arises as a direct result of a Federal "Project".

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

THRITY-FIFTH: That neither the National 13(c) Agreement nor that advanced by Plaintiff as annexed to it's Complaint, is a mandate to arbitrate all major disputes, regardless of whether they arise as the result of a Federal Project or every two (2) years at the time of contract negotiations. The entire 13(c) Agreement must be read in order to determine the context of the definitions of any 13(c) Agreement.

THIRTY-SIXTH: That even in the 13(c) Agreement advanced by Plaintiff, the quotation of Mr. King which was perpetuated in the letter of attorney Barr, annexed to Plaintiff's Complaint, not only was taken out of context of the 13(c) Agreement in toto, but even failed to quote the entire paragraph from which it was taken and specifically omitted the last line of such paragraph which states:

> *"for the protection of employees affected by the Project".*

THIRTY-SEVENTH: That in addition thereto the beginning sentence of said paragraph quoted from said March 11, 1975 13(c) Agreement states:

> *"In the case of any labor dispute where collective bargaining does not result in agreement . . .";*

and that the entire thrust of said paragraph is cushioned upon collective bargaining having run it's course and been unsuccessful.

THRITY-EIGHTH: That fact-finding under the Taylor Law as aforestated is specifically not described as a step to be taken after contract negotiations have failed, but is specifically described as a possible "resolution of dispute(s) in the course of collective negotiations"(New York Civil Service Law Section 209, emphasis added).

THIRTY-NINTH: That therefor , in addition to the application of Plaintiff being inappropriate, it is premature and presupposes a failure of the fact-finder.

FOURTIETH: That your deponent assures this Court on behalf of his clients, that at each and every step under the Taylor Law, his client has tried it's best in the light of economic circumstances and the availability of State, Federal and local operating subsidies upon which your deponent's clients operations depend, to seek a resolution of any and all contract disputes and feels affirmatively that fact-finding can be a great benefit to bringing the parties together. In fact, it is respectfully submitted that had fact-finding gone as originally scheduled, that a contract could well have been agreed upon prior to January 1, 1977.

RELIEF SHOULD BE DENIED BECAUSE PLAINTIFF'S MEMBERS ARE NOT, NOR HAVE THEY BEEN, NOR WILL THEY BE IRREPERABLY NOR OTHERWISE INJURED.

FOURTY-FIRST: That the basis for Plaintiff's ex parte application under Rule 65 of the Federal Rules is that irreperable injury will be done to it's members if fact-finding proceeds.

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

FOURTY-SECOND: Nothing could be further from the truth. Those Defendants appearing herein are mandated by PERB statutes, regulations and by cases decided thereunder to continue any and all benefits including cost of living and other increased benefits during the period of contract negotiations as if the former contract continued in full force and effect.

FOURTH-THIRD: That in addition thereto, any decision to meet with a fact-finder appointed by PERB does not mandate either party in terms of a result which such fact-finder might recommend. Rather, participation in fact-finding is an affirmative sign by both parties of a willingness to resolve an impasse during contract negotiations.

THE 13(c) AGREEMENT IS NOT SUCH AN AGREEMENT AS WILL PRE-EMPT TAYLOR LAW IMPASSE PROCEDURES.

FOURTH-FOURTH: Plaintiff advances the argument that under the Taylor Law (Section 209(2)), an employer and employees' organization may enter into an agreement to arbitrate which will supercede the Taylor Law impasse proceedings.

FOURTY-FIFTH: The 13(c) Agreement is not such an agreement. Union negotiators throughout New York State and other states, have sought to advance 13(c) as an agreement in lieu of Taylor Law or other similar statutory procedures, but no Court has seen fit to determine such approach as correct.

FOURTY-SIXTH: Section 209(2) specifically empowers public employers to enter into written agreements with employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations.

FOURTY-SEVENTH: As aforestated, the 13(c) provisions specifically take affect after contract negotiations have failed and not during their course, and only then as the direct result of a Federally funded project.

FOURTY-EIGHTH: In addition, the parties to the various 13(c) Agreements and especially the National 13(c) Agreement under which the parties are nowempowered never intended such agreement to supercede Taylor Law procedures. No such intent can be found anywhere within the language of the 13(c) Agreement.

PLAINTIFF'S ACTION HEREIN IS BARRED BY THE UNITED STATES CONSTITUTION AND DOES NOT PRESENT A FEDERAL QUESTION.

FOURTY-NINTH: The 11th Amendment to the United States Constitution prevents a State from being subject to suit in the Federal Courts. Many cases have held that the State's immunity from suit extended to boards, commissions and agencies through which it must act when such agencies are carrying on the State's Governmental functions (72 Am. Jur. 2nd Section 104).

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION AND TEMPORARY RESTRAINING ORDER.

FIFTIETH: That the dispute between the parties herein relates directly to Plaintiff's refusal to follow New York State mandated procedures under New York State law specifically designed for New York State Agencies such as the Authority and its said subsidiary corporations.

FIFTY-FIRST: That no question presented herein is one of interstate commerce or of any other Federal statute, but rather an agreement executed by two New York State residents and the interpretation thereof, or in the alternative, a mandate to follow the New York State Taylor Law procedures.

PERB IS READY TO IMMEDIATELY ASSIGN A FACT-FINDER.

FIFTY-SECOND: That your deponent has been in direct contact with PERB upon learning of the service of these papers and the temporary stay granted by this Court and that his client has made an earnest request of PERB to make a fact-finder immediately available upon a favorable determination of this Court and that your deponent has today been assured that a fact-finder will expeditiously be available to Plaintiff and those Defendants appearing herein.

ALLEGATION IN GEORGE B. WRIGHT AFFIDAVIT REGARDING SALARY INCREASES IS INCORRECT.

FIFTY-THIRD: That annexed hereto as Exhibit "N" is an Affidavit of Russell D. Ferdinand, Chief Financial Officer of the Central New York Regional Transportation Authority, and that such Affidavit is written in direct contradiction to provisions of paragraph "24" of the Affidavit herein submitted by George B. Wright, President of the Local Union.

FIFTY-FOURTH: That said Affidavit of Russell D. Ferdinand indicates salary increases received by Plaintiff's members every three (3) months from December, 1975 through December, 1976.

WHEREFORE, it is respectfully requested for the aforementioned reasons that this Court deny the relief sought herein by Plaintiff against the Central New York Regional Transportation Authority, it's subsidiary corporations, CNY Centro, Inc., Centro of Cayuga, Inc. and Centro of Oswego, Inc., and that this Court deny the relief herein sought by Plaintiff so that fact-finding may immediately proceed and meaningful steps taken toward the resolution of contract negotiations.

BARRY M. SHULMAN

Subscribed and sworn to before me

this 8th day of February, 1977.

Diane Lawlor

NOTARY PUBLIC

DIANE LAWLOR
Notary Public in the State of New York
Qualified in Onondaga Co. No. 4630307
My Commission Expires March 30, 1978

Exhibit A – Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

TITLE [16] 11-D—CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY [NEW]

Sec.
1325. Short title.
1326. Definitions.
1327. Central New York regional transportation district.
1328. Central New York regional transportation authority.
1329. Purposes of the authority.
1330. Formulation, filing and adoption of action plan; amendments.
1331. General powers of the authority.
1332. Special powers of the authority.
1332-a. Restrictions.
1333. Acquisition and disposition of real property.
1334. Cooperation and assistance of other agencies.
1335. Notes and bonds of the authority.
1336. Reserve funds and appropriations.
1337. Agreement of the state.
1338. Right of state to require redemption of bonds.
1339. Remedies of noteholders and bondholders.
1340. Notes and bonds as legal investment.
1341. Exemption from taxation.
1342. Actions against the authority.
1343. Agreements relating to payment in lieu of taxes.
1344. Interest of members or employees of authority in contracts prohibited.
1345. Fiscal year.
1346. Consent by the state.
1347. Separability.
1348. Effect of inconsistent provisions.

Title was added as Title 11-D of this article by L.1970, c. 714, § 2, eff. Aug. 1, 1970. It has been inserted as Title 16 of this article to preserve the proper sequence of title and section numbers.

Exhibit A – Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

§ 1325. Short title

This title may be cited as the "Central New York Regional Transportation Authority Act".

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

Legislative findings and purpose. Section 1 of L.1970, c. 714, eff. Aug. 1, 1970, provided: "The legislature hereby finds and declares as follows:

"A. The economic growth of the state and the well-being of its people require adequate, safe, and efficient transportation facilities and services at reasonable cost to the people.

"B. The strengthening and improvement of transportation and related services for the residents of the central part of the state and more particularly the growing counties of Cayuga, Cortland, Jefferson, Madison, Oneida, Onondaga and Oswego is a matter of vital importance.

"C. In order to insure a healthy economy for such an area and to serve the well-being of its people, it is necessary to take the appropriate measures and assume responsibility for the preservation and improvement of non-highway transportation and related services in such an area.

"D. The planning and development of such services is coordinated by the department of transportation which is responsible for balanced transportation policy and planning for all modes.

"E. The provision of adequate and efficient non-highway transportation and related services in such an area requires coordinated operation of mass transit, omnibus, aviation, and marine transportation service by a public transportation authority.

"F. In order that such a public transportation authority may perform its function, the municipalities included in the authority's transportation district must assume financial responsibility for the authority, utilizing whatever grants are offered or assistance made available, since the facilities operated by the authority may not be self-supporting."

§ 1326. Definitions

As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Authority" shall mean the corporation created by section thirteen hundred twenty-eight of this title.

2. "Transportation district" and "district" shall mean the central New York regional transportation district created by section thirteen hundred twenty-seven of this title.

3. "Participating county" shall mean any of the counties defined in section thirteen hundred twenty-seven of this title.

4. "Federal government" shall mean the United States of America, and any officer, department, board, commission, bureau, division, corporation, agency or instrumentality thereof.

5. "Governor" shall mean the governor of the state of New York.

6. "Comptroller" shall mean the comptroller of the state of New York.

7. "Director of the budget" shall mean the director of the budget of the state of New York.

8. "State" shall mean the state of New York.

9. "State agency" shall mean any officer, department, board, commission, bureau, division, public benefit corporation, agency or instrumentality of the state.

10. "Municipality" shall mean a city, town, village or county not wholly contained within a city.

11. "Municipal corporation" shall mean a city, town, village, county not wholly contained within a city, special transportation district, public benefit corporation or other public corporation, or two or more of the foregoing acting jointly.

12. "Personal property" shall mean chattels and other tangible things of a movable or removable nature.

13. "Property" shall mean both real and personal property.

14. "Master plan" shall mean the long range regional transportation plan for the central New York area including, but not limited to that

Exhibit A – Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

prepared by the Syracuse metropolitan transportation study and the Oswego-Fulton area transportation study and approved by the commissioner.

15. "Joint service arrangement" shall mean agreements between or among the authority and any common carrier or freight forwarder, the state, any state agency, the federal government, any other state or agency or instrumentality thereof, any public authority of this or any other state, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, divisions, allowances or charges (including charges between operators of railroad, omnibus, marine and aviation facilities) or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part or upon railroad, omnibus, marine or aviation facilities located within the district and in part in or upon railroad, omnibus, marine or aviation facilities located outside the district.

16. "Project" shall mean any undertaking by the authority within the district including but not limited to port or harbor facilities, transportation properties, access and service roads and bridges, serving railroad, omnibus, marine and air facilities, equipment, appurtenances, airport facilities and any other improvement under authority jurisdiction within the district.

17. "Facility" shall mean, among other things, such properties, structures, appurtenances, terminals, wharves, docks, piers, railroad trackage, warehouses, elevators, equipment for handling freight, passengers and vehicles and such other works, properties, buildings or allied items necessary or desirable in connection with development, operation, maintenance or improvement of port, airport and public transportation needs for the accommodation, safety or comfort of the public and commercial enterprise for the regional transportation district.

18. "Equipment" shall mean rolling stock, omnibuses, vehicles, air, marine or surface craft, motors, boilers, engines, and other instrumentalities used or useful therefor or in connection therewith.

19. "Omnibus facilities" shall mean motor vehicles, of the type operated by carriers subject to the jurisdiction of the public service commission, engaged in the transportation of passengers and their baggage, express and mail between points within the district or pursuant to joint service arrangements, and equipment, property, buildings, structures, improvements, loading or unloading areas, parking areas, berthing facilities or other facilities, necessary, convenient or desirable for the accommodation of such motor vehicles or their passengers, including but not limited to buildings, structures and areas notwithstanding that portions may not be devoted to any omnibus purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority.

20. "Railroad facilities" shall mean right-of-way and related trackage, rails, cars, locomotives, other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personalty used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating or to operate between points within the district or pursuant to joint service arrangements, including but not limited to buildings, structures, and areas notwithstanding that portion thereof may not be devoted to any railroad purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority.

21. "Real property" shall mean lands, structures, franchise and interests in land, waters, lands under water, riparian rights and any and all things and rights included within said term and includes not only fees simple absolute but also any and all lesser interests including but not limited to easements, rights-of-way, uses, leases, licenses and all other

Exhibit A – Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

incorporeal hereditaments . every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

22. "Marine and aviation facilities" shall mean equipment and craft for the transportation of passengers, mail and cargo between points from and to and within the district or pursuant to joint service arrangements, by marine craft and aircraft of all types including but not limited to hydrofoils, ferries, lighters, tugs, barges, helicopters, amphibians, seaplanes or other contrivances now or hereafter used in navigation or movement on waterways or in the navigation of or flight in airspace. It shall also mean any airport facility within the transportation district, including but not limited to any facility or real property necessary, convenient or desirable for the landing, taking off, accommodation or servicing of such aircraft, and shall include such facilities, property, structures and appurtenances as may be necessary or convenient in the operation, maintenance, development or improvement of airports including facilities, property, structures, and appurtenances, leased by the authority to persons, firms or corporations engaged in air transportation or the production or development of materials, goods or equipment for airports or air transportation or in providing facilities for the accommodation, safety or comfort of the traveling public and for purposes related or incidental to one or more of the foregoing purposes. It shall also mean port facilities in the transportation district including but not limited to, (a) one or more docks, elevators, wharves, piers, bulkheads, slips, basins, harbors, railroad connections, side tracks or sidings, freight terminals, warehouses, bridges, tunnels, and areas for storage of cargoes, materials, goods, wares, and merchandise of any kind and for the loading, unloading, interchange or transfer of any such cargoes, materials, goods, wares and merchandise; (b) other buildings, structures, facilities or improvements necessary to accommodate steamships or other vessels and their cargoes or passengers; and (c) all real and personal property, driveways, roads, approaches, mechanical equipment and all appurtenances and facilities either on, above or under the ground which are necessary, convenient or desirable for the development, control and operation of port facilities in the transportation district.

23. "Transportation facility" shall mean any railroad, omnibus, marine or aviation or parking facility and any person, firm, partnership, association or corporation which owns, leases or operates any such facility or any other facility used for service in the transportation of passengers, United States mail or personal property as a common carrier for hire and any portion thereof and the rights, leaseholds or other interest therein together with routes, tracks, extensions, connections, parking lots, garages, warehouses, yards, storage yards, maintenance and repair shops, terminals, stations and other related facilities thereof, the devices, appurtenances, and equipment thereof and power plants and other instrumentalities used or useful therefor or in connection therewith.

24. "Commissioner" shall mean commissioner of transportation of the state of New York.

25. "Action plan" shall mean a plan for implementation and improvement of such means of public transportation and related services by omnibus, railroad and marine and aviation facilities as the authority may contemplate within the transportation district to effectuate the purposes of this act.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1327. Central New York regional transportation district

1.[1] There is hereby created and established a transportation district to be known as the central New York regional transportation district. This district shall embrace the county of Onondaga and such of the following counties as may elect to become members by action of their governing bodies: Cayuga, Cortland, Jefferson, Madison, Oneida and

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

Oswego. The transportation district shall also include all lands and water and all lands under water and all rivers, lakes, bays and harbors within any of the counties of said district.
Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.
[1] No subd. 2 has been enacted.

§ 1328. Central New York regional transportation authority

1. There is hereby created the central New York regional transportation authority. The authority shall be a body corporate and politic constituting a public benefit corporation. It shall consist of not more than eleven members, including a chairman. The members shall be appointed by the governor by and with the advice and consent of the senate. The governor shall make initial appointments to the authority in such number and from lists submitted as follows: three members shall be appointed to the authority from a list of not less than six names, submitted to the governor by the common council of the city of Syracuse, five persons from a list of not less than ten names, submitted by the legislature of the county of Onondaga. Other counties electing to participate shall each submit to the governor a list of not less than two persons for each one hundred thousand or major fraction of the total population, as determined by the nineteen hundred seventy or any subsequent federal decennial or federal county-wide special census, of the counties outside the county of Onondaga which shall elect to participate, from which number the governor shall appoint one member for each one hundred thousand or major fraction of the total population, as determined by such federal decennial or federal county-wide special census, with a maximum of three members to represent such counties outside the county of Onondaga so electing to participate. If Oneida county elects to join the authority, one of the three members shall be selected by the governor from the two or more nominees of the Oneida county board of supervisors.

2. The members of the authority shall continue in office until their successors are appointed and shall have qualified. One member recommended by the common council of the city of Syracuse and one member recommended by the legislature of the county of Onondaga shall be appointed for terms ending July thirty-first, nineteen hundred seventy-five; one member recommended by the common council of the city of Syracuse and two members recommended by the legislature of the county of Onondaga shall be appointed for terms ending July thirty-first, nineteen hundred seventy-six; and one member recommended by the common council of the city of Syracuse and two members recommended by the legislature of the county of Onondaga shall be appointed for terms ending July thirty-first, nineteen hundred seventy-seven. The member (or members) who is (or are) recommended by the other county legislatures or board of supervisors shall be appointed for a term (or terms) of seven years, but all terminating on the thirty-first day of July of the seventh year. Thereafter, upon expiration of the term of a member of the authority a successor shall be appointed by the governor for a term expiring seven years after the expiration of the term of his predecessor. If a vacancy shall occur by reason of death, disqualification, resignation or removal of a member, the successor shall be appointed by the governor for the unexpired term. Persons succeeding members recommended by the appropriate legislative bodies of the city of Syracuse and the counties of Onondaga and Oneida on the authority shall be appointed by the same procedure as the original appointments. The same procedure shall be followed for the filling of vacancies of members appointed from other counties. Members of the authority shall, before entering upon the duties of their office, take the constitutional oath of office and file the same in the office of the secretary of state.

3. The members of the authority shall be entitled to a fee of one hundred dollars per day when rendering service as a member, provided that the aggregate of such fees to any one member in any one fiscal year shall not exceed the sum of five thousand dollars. Each member

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their official duties.

4. A majority of the whole number of members of the authority shall constitute a quorum for the transaction of business or the exercise of any power of the authority. Except as otherwise specified in this act, for the transaction of any business or the exercise of any power of the authority, the authority shall have power to act by a majority of the members present at any meeting at which a quorum is in attendance.

5. The authority shall organize by the selection from its members of a chairman, vice-chairman and secretary. It shall adopt such rules as it may deem necessary and proper for the government of its own proceedings, and shall keep a record of such proceedings.

6. The authority shall be a "state agency" for the purposes of sections seventy-three and seventy-four of the public officers law.

7. Notwithstanding any inconsistent provision of this or any other law, general, special or local, no officer or employee of the state, or of any public corporation as defined in the general corporation law, shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or any of its subdivisions by reason of his acceptance of membership on or chairmanship of the authority; provided, however, a member or chairman who holds such other public office or employment shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

8. The governor may remove any member for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel in his defense, upon not less than ten days' notice. If any member shall be so removed, the governor shall file in the office of the department of state a complete statement of charges made against such member, and his findings thereon, together with a complete record of the proceedings.

9. The authority shall continue so long as it shall have bonds or other obligations outstanding and until its existence shall be terminated by law. Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state.

10. Each of the counties that elect to become participating members of the transportation district may do so by resolution adopted by a majority of the membership of its governing body and such election by a county shall take effect upon the filing of a duly certified copy of such resolution with the authority and with the secretary of state, and the mailing of a certified copy thereof to the county clerk of each county which is granted the power of election under the provisions of this act. Added L.1970, c. 714, § 2; amended L.1973, c. 939, § 1.

1973 Amendment. Subd. 3. L.1973, c. 939, § 1, eff. July 1, 1973, substituted provisions that members be entitled to a fee of one hundred dollars per day when rendering service as a member, provided that the aggregate of such fees to any one member in any one fiscal year shall not exceed the sum of five thousand dollars, for provisions that members serve without compensation.

§ 1329. Purposes of the authority

1. The purposes of the authority shall be the continuance, further development and improvement of transportation and other services related thereto within the transportation district, by railroad, omnibus, marine and air, in accordance with the provisions of this title.

2. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the authority shall be regarded as performing an essential governmental func-

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

in carrying out its purposes and in exercising the powers granted by title.
ed L.1970, c. 714, § 2, eff. Aug. 1, 1970.

1330. Formulation, filing and adoption of action plan; amendments

ie authority shall formulate an action plan for transportation within district. In formulating such plan, the authority shall consult and erate with the commissioner and the planning authorities in the area s operations, and shall utilize state, local or regional transportation ning. The authority shall request and use existing studies, plans, eys, data and other materials completed by or under development by state agency or municipality. The authority shall file copies of such with the commissioner, the central New York regional planning development board, the common council of the city of Syracuse, the ty legislature of the county of Onondaga, and with the legislative of any other county, within the district, affected by such plan, as nafter stated. The plan shall contain information regarding the portation system that the authority intends to provide including ination regarding the facilities connected therewith, the services authority contemplates providing and the estimated costs and the osed method of financing. During sixty days after the filing of ction plan with the commissioner, the central New York regional ning and development board and with the legislative body or bodies foresaid, said plan shall be available for public inspection at the e or offices of the authority and at such other places in the areas ted, within the district, as the authority may designate. Not earlier thirty days after the filing of said action plan with the commisr, the central New York regional planning and development board such legislative body or bodies, a public hearing on said plan shall ld by the authority. Notice of such a hearing shall be given to the issioner, the central New York regional planning and development l and the legislative body or bodies as aforesaid and by publication a week for two weeks prior to the said hearing at the time and fixed by the authority in newspapers of general circulation within reas affected, to be selected by the authority. The last publicadate shall not be less than five days before said hearing. Within days following said public hearing, the authority shall provide a cript of such hearing to the commissioner, the central New York nal planning and development board and the legislative body or s as aforesaid, together with any amendments the authority may se to the action plan. The authority shall request approval of the plan, including such amendments as the authority may propose, the commissioner and the aforementioned legislative body or bodies. part of said plan which is disapproved by a political subdivision beit alters existing services or the financing thereof within said cal subdivision shall not become operative. The commissioner may prove any part of said plan if he finds that it conflicts with a wide comprehensive master plan for transportation or the Syracuse politan transportation study and the Oswego-Fulton area transpor- study or, in the absence of such plans, would have an adverse efpon sound transportation development policy and planning. Any of such plan so disapproved by the commissioner shall not become tive. Disapproval of part or parts of the plan shall not make the plan inoperative. If the said legislative body or bodies fail to within sixty days or in the case of the commissioner within ninety after approval is requested, said failure shall be deemed approval, he authority may adopt the action plan by a majority vote of its ership and may include changes, if any, recommended by the comoner, said planning board or legislative body or bodies.

action plan may be amended from time to time in the same mansing the procedures outlined herein for the original adoption, except

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

that a proposed amendment which is recommended by the legislative body or bodies affected thereby and approval by the commissioner may be embodied or continued by a majority vote of the authority without additional hearings thereon as required for the amendments proposed to be made.
Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1331. General powers of the authority

A. Except as otherwise limited by this title, the authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;
4. To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the authority, in obligations of the state or the United States government or obligations the principal and interest of which are guaranteed by the state or the United States government;
5. To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title;
6. To enter into contracts and leases and to execute all instruments necessary or convenient;
7. To acquire, hold and dispose of real or personal property in the exercise of its powers;
8. To appoint a general manager, who shall serve at the pleasure of the authority, and such officers and employees as the authority may require for the performance of its duties, and to fix and determine their qualifications, duties, and compensation and to retain or employ counsel, auditors, engineers, and private consultants on a contract basis or otherwise for rendering professional, management or technical services and advice; such general manager may be a member of the authority;
9. (a) Notwithstanding section one hundred thirteen of the retirement and social security law or any other general or special law, the authority and any of its subsidiary corporations may continue or provide to its affected officers and employees any retirement, disability, death or other benefits provided or required for railroad personnel pursuant to federal or state law. Notwithstanding any provisions of the civil service law, no officer or employee of a subsidiary corporation, of the authority, other than a public benefit subsidiary corporation, shall be a public officer or a public employee;

(b) The authority and any of its public benefit subsidiary corporations may be a "participating employer" in the New York state employees' retirement system with respect to one or more classes of officers and employees of such authority or any such public benefit subsidiary corporation, as may be provided by resolution of such authority or any such public benefit subsidiary corporation, as the case may be, or any subsequent amendment thereof, filed with the comptroller and accepted by him pursuant to section thirty-one of the retirement and social security law. In taking any action pursuant to this paragraph (b), the authority and any of its public benefit subsidiary corporations shall consider the coverages and benefits continued or provided pursuant to paragraph (a) of this subdivision;

10. To make plans, surveys, and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto;
11. To enter upon such lands, waters or premises as in the judgment of the authority may be necessary, convenient or desirable for

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

e purpose of making surveys, soundings, borings and examinations accomplish any purpose authorized by this title, the authority being ble for actual damage done;

12. The authority may conduct investigations and hearings in the rtherance of its general purposes, and in aid thereof have access to y books, records or papers relevant thereto; and if any person whose stimony shall be required for the proper performance of the duties the authority shall fail or refuse to aid or assist the authority in e conduct of any investigation or hearing, or to produce any relevant oks, records or other papers, the authority is authorized to apply for rocess of subpoena, to issue out of any court of general original jurisiction whose process can reach such person, upon due cause shown;

13. To do all things necessary, convenient or desirable to carry out s purposes and for the exercise of the powers granted in this title.

14. To enter into collective bargaining agreements with labor repreentatives duly elected by the employees of the authority;

15. To insure or provide for the insurance of the authority's propty or operations as required by law and also against such other risks the authority may deem advisable.

B. The authority shall prepare and file with the commissioner and ch county of the transportation district an annual budget consisting of ojected operating revenues and expenditures for the next fiscal year.

C. The authority shall file in the office of the commissioner annual ports, after the close of each of the authority's fiscal years, which all be open to public inspection. Such reports shall include, in addion to any information which the commissioner may require, a stateent with respect to its operation including the following data:

(a) Cost breakdown of real property acquired for each system or cility acquired or operated by the authority;

(b) Cost breakdown in appropriate units of facilities acquired for ch facility acquired or operated by the authority;

(c) Operating revenues for each facility acquired or operated by the thority;

(d) Operating expenses for each facility acquired or operated by e authority.

The authority shall also file copies of such reports with the legislative dy or bodies of the city of Syracuse and all counties where such auority operates. In addition, the commissioner may request the auority to file interim reports with him containing such information ich he may require and the authority shall file such reports.

lded L.1970, c. 714, § 2, eff. Aug. 1, 1970.

Contracts

The Central New York Regional ansportation Authority may bid on ra-regional charter omnibus serv- but may not bid on charter business outside of the area of the Authority's jurisdiction, except by virtue of a joint service arrangement. 1974, Op.Atty.Gen. (Inf.) Aug. 20.

§ 1332. Special powers of the authority

In order to effectuate the purposes of thi itle: 1. The authority y acquire, by purchase, gift, grant, transfer, contract or lease, or ndemnation, any transportation facility, including port or related cilities wholly or partially within the transportation district or any rt thereof, or the use thereof, and may enter into any joint service rangements as hereinafter provided. Any such acquisition or joint rvice arrangement shall be authorized only by resolution of the auority approved by not less than a majority of the whole number of mbers of the authority then in office.

2. The authority may on such terms and conditions as the authority y determine necessary, convenient or desirable itself establish, con-

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

struct, effectuate, operate, maintain, renovate, improve, extend or repair any such transportation facility, or may provide for such establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair by contract, lease, or other arrangement on such terms as the authority may deem necessary, convenient or desirable with any person, including but not limited to any common carrier or freight forwarder, the state, any state agency, the federal government, any other state or agency or instrumentality thereof, any public authority of this or any other state or any political subdivision or municipality of the state. In connection with the operation of any such transportation facility, the authority may establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair or may provide by contract, lease or other arrangement for the establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair of any related services and activities it deems necessary, convenient or desirable, including but not limited to the transportation and storage of freight and the United States mail, feeder and connecting transportation, parking areas, transportation centers, port, stations and related facilities.

3. The authority may establish, levy and collect or cause to be established, levied and collected and, in the case of a joint service arrangement, join with others in the establishment, levy and collection of such fares, tolls, rentals, rates, charges and other fees as it may deem necessary, convenient or desirable for the use and operation of any transportation facility and related services operated by the authority or by a subsidiary corporation of the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority. Any such fares, tolls, rentals, rates, charges or other fees for the transportation of passengers shall be established and changed only if approved by resolution of the authority adopted by not less than a majority of the whole number of members of the authority then in office and only after a public hearing, provided however, that fares, tolls, rentals, rates, charges or other fees for the transportation of passengers on any transportation facility which are in effect at the time that the then owner of such transportation facility becomes a subsidiary corporation of the authority or at the time that operation of such transportation facility is commenced by the authority or is commenced under contract, lease or other arrangement including joint service arrangements, with the authority may be continued in effect without such a hearing. Such fares, tolls, rentals, rates, charges and other fees shall be established as may in the judgment of the authority be necessary to maintain the combined operations of the authority and its subsidiary corporations on a self-sustaining basis. The said operations shall be deemed to be on a self-sustaining basis as required by this title, when the authority is able to pay or cause to be paid from revenue and any other funds or property actually available to the authority and its subsidiary corporations (a) as the same shall become due, the principal of and interest on the bonds and notes and other obligations of the authority and of such subsidiary corporations, together with the maintenance of proper reserves therefor, (b) the cost and expense of keeping the properties and assets of the authority and its subsidiary corporations in good condition and repair, and (c) the capital and operating expenses of the authority and its subsidiary corporations. The authority may contract with the holders of bonds and notes with respect to the exercise of the powers authorized by this section.

4. The authority may establish and, in the case of joint service arrangements, join with others in the establishment of such schedules and standards of operations and such other rules and regulations including but not limited to rules and regulations governing the conduct and safety of the public as it may deem necessary, convenient or de-

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

sirable for the use and operation of any transportation facility and related services operated by the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority. Such rules and regulations governing the conduct and safety of the public shall be filed with the department of state in the manner provided by section one hundred two of the executive law. In the case of any conflict between any such rule or regulation of the authority governing the conduct or safety of the public and any local law, ordinance, rule or regulation, such rule or regulation of the authority shall prevail. Violation of any such rule or regulation of the authority governing the conduct or the safety of the public in or upon any facility of the authority shall constitute an offense and shall be punishable by fine not exceeding fifty dollars or imprisonment for not more than thirty days or both.

5. The authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any of its facilities through, and cause any one or more of its powers, duties, functions or activities to be exercised or performed by, one or more wholly owned subsidiary corporations of the authority and may transfer to or from any such corporation any moneys, real property or other property for any of the purposes of this title. The directors or members of each such subsidiary corporation shall be the same persons holding the offices of members of the authority. Each such subsidiary corporation and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities. Each such subsidiary corporation shall be subject to the restrictions and limitations to which the authority may be subject. Each such subsidiary corporation shall be subject to suit in accordance with section thirteen hundred forty-one of this title. The employees of any such subsidiary corporation, except those who are also employees of the authority, shall not be deemed employees of the authority.

If the authority shall determine that one or more of its subsidiary corporations should be in the form of a public benefit corporation, it shall create each such public benefit corporation by executing and filing with the secretary of state a certificate of incorporation, which may be amended from time to time by filing, which shall set forth the name of such public benefit subsidiary corporation, its duration, the location of its principal office, and any or all of the purposes of acquiring, owning, leasing, establishing, constructing, effectuating, operating, maintaining, renovating, improving, extending or repairing one or more facilities of the authority. Each such public benefit subsidiary corporation shall be a body politic and corporate and shall have all those powers vested in the authority by the provisions of this title which the authority shall determine to include in its certificate of incorporation except the power to contract indebtedness.

Whenever any state, political subdivision, municipality, commission, agency, officer, department, board, division or person is authorized and empowered for any of the purposes of this title to cooperate and enter into agreements with the authority such state, political subdivision, municipality, commission, agency, officer, department, board, division or person shall have the same authorization and power for any of such purposes to cooperate and enter into agreements with a subsidiary corporation of the authority.

6. The authority, in its own name or in the name of the state, may apply for and receive and accept grants of property, money, services and other assistance offered or made available to it by any person, government or agency whatever, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable. In

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

no event, however, shall the authority submit to the United States or to the state of New York, or any agency or instrumentality of them, an application for a federal or state project unless the application shall have been first approved by the commissioner as being part of or consistent with such statewide plan, regional plan or transportation development policy and planning concept.

7. The authority may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of transportation facilities, equipment or real property operated by or under contract, lease or other arrangement with the authority. Except as hereinafter specially provided, no municipality or political subdivision, including but not limited to a county, city, village, town or school or other district shall have jurisdiction over any facilities of the authority or any of its activities or operations. In the operation, maintenance and control of any facilities devoted to purposes other than direct transportation purposes, the authority shall be subject to all local laws, resolutions, ordinances, rules and regulations of a municipality or political subdivision. Each municipality or political subdivision, including but not limited to a county, city, village, town or district in which any facilities of the authority are located shall provide for such facilities police, fire and health protection services of the same character and to the same extent as those provided for residents of such municipality or political subdivision.

The authority may agree with the state department of transportation for the execution by such department of any grade crossing elimination project or any grade crossing separation reconstruction project along any railroad facility operated by the authority or by one of its subsidiary corporations or under contract, lease or other arrangement with the authority. Any such project shall be executed as provided in the grade crossing elimination act and the railroad law, respectively, and the costs of any such project shall be borne as provided in such laws.

8. The authority may accept unconditional grants of money or property as subsidy payments for expansion of service into areas where such service would not be self-supporting. The authority may accept unconditional grants of money or property from any city, village, town or county not wholly contained within a city the whole or any part of which shall be served or to be served by a transportation facility operated by the authority. Such grants of money or property would be for the purpose of assisting the authority in meeting its capital or operating expenses. The acceptance of any such grant shall not operate to make the authority an agency of the municipality making the grant. The provisions of this section are intended as enabling legislation only and shall not be interpreted as implying that absent their enactment an authority would lack the power to accept such grant or subsidy.

9. Notwithstanding any of the above provisions, no project may be undertaken by the authority unless such project is a part of or consistent with the action plan.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1332-a. Restrictions

With respect to any statewide mass transportation operating assistance program established pursuant to section eighteen-a of the transportation law which by its terms makes available to the authority monies for operating expenses as mass transportation operating assistance service payments, no application therefor shall be made and no monies available under such program shall be accepted by the authority, notwithstanding the provision of any other law, unless the county legislature of any member county whose matching fund percentage for service payments under such section is at least eighty-five percent, authorizes the authority, by

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

resolution adopted by a majority of the county legislature, to make such application.

Added L.1974, c. 700, § 1.

Effective Date. L.1974, c. 700, § 2, provided that this section shall take effect May 31, 1974.

§ 1333. Acquisition and disposition of real property

1. In addition to the powers provided in section thirteen hundred thirty-one of this title to acquire transportation facilities, equipment and real property, the authority may acquire, by condemnation pursuant to the condemnation law and/or in accordance with the condemnation provisions of subdivision seven of this section, any real property it may deem necessary, convenient, or desirable to effectuate the purpose of this title, provided, however, that any such condemnation proceedings shall be brought only in the supreme court and the compensation to be paid shall be ascertained and determined by the court without a jury. Notwithstanding the foregoing provisions of this subdivision, no real property may be acquired by the authority by condemnation or by purchase for purposes other than a transportation facility unless the governing body of the city, village or town in which such real property is located shall first consent to such acquisition.

2. Nothing herein contained shall be construed to prevent the authority from bringing any proceedings to remove a cloud on title or such other proceedings as it may, in its discretion, deem proper and necessary or from acquiring any such property by negotiation or purchase.

3. Where a person entitled to an award in the proceedings to condemn any real property for any of the purposes of this title remains in possession of such property after the time of the vesting of title in the condemnor, the reasonable value of his use and occupancy of such property subsequent to such time as fixed by agreement or by the court in such proceedings or by any court of competent jurisdiction shall be a lien against such award subject only to the liens of record at the time of vesting of title in the condemnor.

4. Title to all property acquired under this act shall vest in the authority.

5. The authority may, whenever it determines that it is in the interest of the authority, dispose of any real property or property other than real property, which it determines is not necessary, convenient or desirable for its purposes.

6. The authority may, whenever it shall determine that it is in the interest of the authority, rent, lease or grant easements or other rights in, any land or property of the authority.

7. The authority may adopt the following condemnation procedures. A certified copy of a resolution adopted by the authority authorizing the acquisition and identifying and describing the property and franchises, if any, sought to be acquired by condemnation shall be filed in the office of the county clerk of the county in which such property is situated, held or maintained. A petition for an order vesting title to such property and franchises, if any, sought to be acquired by condemnation shall set forth a description of the said property and franchises, if any, and a prayer that title be vested in the authority, shall be presented, upon notice of the application to condemn published in five successive issues of a publication of general circulation within the county where such property and franchises, if any, are located, to a special term of the supreme court held at the time and place specified in such notice, within the judicial district in which the property being acquired or some part thereof is situated. Such proceedings shall have precedence over all other cases on the calendar of such court, any other provision of the law to the contrary notwithstanding. Upon due proof to the satisfaction

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

of the court of the filing of the resolution as hereinafter described, such court, not later than three days after the presentation of the petition, shall thereupon enter an order vesting title to such property and franchises, if any, in the authority. Upon such vesting of title the authority shall have the right to enter upon and take possession of such property. A notice of such acquisition shall be directed to the owners of the property and franchises, if any, so acquired and to any other person or persons having an estate, interest or easement in such property or a lien, charge or encumbrance thereon by personal service or by registered mail at the last known address within fifteen days after such vesting of title. Such notice shall set forth such resolution, the date of the submission to the court, the date of the order vesting title in such authority and such other matters as the authority may determine.
Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1334. Cooperation and assistance of other agencies

In the interest of economy and to promote coordination of authority projects with state, local, county and regional plans and also to carry out the objective of full participation of all agencies in the development of a transportation system and facilities to meet the objectives of this act, the authority shall request and use existing studies, master plans, surveys, data and other materials completed by or under development by any state agency or any municipality or political subdivision of the state. The authority shall consult with and cooperate with the commissioner and with planning authorities in the areas of its operations and shall utilize local or state planning. When a project is contemplated by the authority, the authority shall submit a preliminary prospectus thereof to the commissioner for review and comment and shall consider the report of the commissioner in formulating detailed plans for such project. When a project is contemplated by the authority within the jurisdiction of any county planning board or the central New York regional planning and development board, the authority shall prepare and submit to such planning board or boards a preliminary prospectus thereof, describing the purpose, general location, and nature of the project contemplated, with such further data relative thereto that the authority shall consider pertinent. Within sixty days of receipt of such prospectus such planning board or boards shall prepare a report thereon, commenting on its conformity or lack of conformity with any related official plan of the state or region or any official planning agency within the region. Such report shall be considered by the authority in formulating detailed plans for such a project. At the request of the authority, each such agency, municipality or subdivision which is engaged in highway or other transportation activities or in land use or development planning, or which is charged with the duty of providing or regulating any transportation facility or any other public facility, is further authorized to provide the authority with information regarding its plans and programs affecting the transportation district so that the authority may have available to it current information with respect thereto. The officers and personnel of such agencies, municipalities or subdivisions, and of any other government or agency whatever, may serve at the request of the authority upon such advisory committees as the authority shall determine to create and such officers and personnel may serve upon such committees without forfeiture of office or employment and with no loss or diminution in the compensation, status, rights and privileges which they otherwise enjoy.
Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1335. Notes and bonds of the authority

1. (a) The authority shall have power and is hereby authorized from time to time to borrow money and issue its negotiable bonds and notes in such principal amount, as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving its purposes, including the

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

acquisition, establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair of any transportation facility, the payment of interest on bonds and notes of the authority, establishment of reserves to secure such bonds and notes, the provision of working capital and all other expenditures of the authority and its subsidiary corporations incident to and necessary or convenient to carry out their purposes and powers;

(b) The authority shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other purposes. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded;

(c) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues;

(d) Whether or not the notes or bonds are of such form and character as to be negotiable instruments under article eight of the uniform commercial code, the notes or bonds shall be and hereby are made negotiable instruments within the meaning of and for all the purposes of article eight of the uniform commercial code, subject only to the provisions of the notes or bonds for registration.

2. The notes and bonds shall be authorized by resolution approved by not less than a majority of the whole number of members of the authority then in office, shall bear such date or dates, and shall mature at such time or times, as specified therein and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price or prices as the authority shall determine. No notes or bonds of the authority may be sold by the authority at private sale, however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller, or (b) the director of the budget where such sale is to the comptroller.

3. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) pledging all or any part of the fares, tolls, rentals, rates, charges and other fees made or received by the authority or any of its subsidiary corporations, and other moneys received or to be received, to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

(b) pledging all or any part of the assets of the authority or of any of its subsidiary corporations to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(c) the use, and disposition of fares, tolls, rentals, rates, charges and other fees made or received by the authority or any of its subsidiary corporations;

(d) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

(e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(f) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; the refunding of outstanding or other notes or bonds;

(g) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) limitations on the amount of moneys to be expended by the authority or any of its subsidiary corporations for operating, administrative or other expenses of the authority or any of its subsidiary corporations;

(i) vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this title, and limiting or abrogating the right of the bondholders to appoint a trustee under this article or limiting the rights, powers and duties of such trustee;

(j) any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

4. In addition to the powers herein conferred upon the authority to secure its notes and bonds, the authority shall have power in connection with the issuance of notes and bonds to enter into such agreements as the authority may deem necessary, convenient or desirable concerning the use or disposition of its moneys or property or the moneys or property of any of its subsidiary corporations, including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such moneys or property and the doing of any act (including refraining from doing any act) which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the notes and bonds of the authority.

5. It is the intention hereof that any pledge, mortgage or security instrument made by the authority shall be valid and binding from the time when the pledge, mortgage or security instrument is made; that the moneys or property so pledged, mortgaged and entrusted and thereafter received by the authority shall immediately be subject to the lien of such pledge, mortgage or security instrument without any physical delivery thereof or further act; and that the lien of any such pledge, mortgage or security instrument shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any mortgage, security instrument or other instrument by which a pledge, mortgage lien or other security is created need be recorded or filed and the authority shall not be required to comply with any of the provisions of the uniform commercial code.

6. Neither the members of the authority nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

7. The authority, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon be cancelled, at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon, or (b) if the notes or bonds are not then redeemable, the redemption price applicable on the

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

8. The state shall not be liable on notes or bonds of the authority and such notes and bonds shall not be a debt of the state, and such notes and bonds shall contain on the face thereof a statement to such effect.
Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1336. Reserve funds and appropriations

1. The authority may create and establish one or more reserve funds to be known as debt service reserve funds and may pay into such debt service reserve funds (a) any moneys appropriated and made available by the state for the purposes of such funds, (b) any proceeds of sale of notes or bonds to the extent provided in the resolution of the authority authorizing the issuance thereof, and (c) any other moneys which may be made available to the authority for the purpose of such funds from any other source or sources. The moneys held in or credited to any debt service reserve funds established under this section, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the authority secured by such debt service reserve fund as the same mature, the purchase of such bonds of the authority, the payment of interest on such bonds of the authority or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that the authority shall have power to provide that moneys in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year or years not exceeding two such years on the bonds of the authority then outstanding and secured by such debt service reserve fund, except for the purpose of paying principal of and interest on such bonds of the authority secured by such debt service reserve fund maturing and becoming due and for the payment of which other moneys of the authority are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred by the authority to any other fund or account of the authority and the authority shall have power to provide that any such transfer shall not reduce the amount of such debt service reserve fund below the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year or years not exceeding two such years on all bonds of the authority then outstanding and secured by such debt service reserve fund.

2. The authority shall have power to provide that it shall not issue bonds at any time if the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year or years not exceeding two such years on the bonds outstanding and then to be issued and secured by a debt service reserve fund will exceed the amount of such debt service reserve fund at the time of issuance, unless the authority, at the time of the issuance of such bonds, shall deposit in such debt service fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in such debt service reserve fund, will be not less than the maximum amount of principal and interest maturing and becoming due in any such succeeding calendar year or years not exceeding two such years on the bonds then to be issued and on all other bonds of the authority then outstanding and secured by such debt service reserve fund.

3. In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such fund shall be invested shall be valued at par, or if purchased at less than par, at their cost to the authority.

[4. Renumbered 3.]
Added L.1970, c. 714, § 2; amended L.1976, c. 38, § 6.

1976 Amendment. Subd. 3. L.1976, c. 38, § 6, eff. Apr. 1, 1976, repealed subd. 3, which prescribed procedure for maintaining debt service reserve fund levels to assure continued operation and solvency of the authority and to assure that such reserve fund is maintained in such amounts provided therefor by the authority and the issuance of its bonds secured thereby, and renumbered former subd. 4 as 3.

Subd. 4. L.1976, c. 38, § 6, eff. Apr. 1, 1976, renumbered former subd. 4 as 3.

§ 1337. Agreement of the state

The state does hereby pledge to and agree with the holders of any notes or bonds issued under this title, that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1338. Right of state to require redemption of bonds

Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the authority to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published in at least two newspapers published and circulating in the counties of the transportation district, at least twice, the first publication to be at least thirty days before the date of redemption.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1339. Remedies of noteholders and bondholders

1. In the event that the authority shall default in the payment of principal of or interest on any issue of notes or bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of any county in which the authority operates and has an office and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his or its own name:

(a) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the authority to collect fares, tolls, rentals, rates, charges and other fees adequate to carry out any agreement as to, or pledge of, such fares, tolls, rentals, rates, charges and other fees and to require the authority to carry out any other agreements with the

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

rs of such notes or bonds and to perform its duties under this title;
) bring suit upon such notes or bonds;
) by action or suit, require the authority to account as if it were the ee of an express trust for the holders of such notes or bonds;
) by action or suit, enjoin any acts or things which may be unlawful violation of the rights of the holders of such notes or bonds;
) declare all such notes or bonds due and payable, and if all defaults be made good, then, with the consent of the holders of twenty-five entum of the principal amount of such notes or bonds then outstand- to annul such declaration and its consequences.

Such trustee shall in addition to the foregoing have and possess all e powers necessary or appropriate for the exercise of any functions fically set forth herein or incident to the general representation of holders or noteholders in the enforcement and protection of their s.

The supreme court shall have jurisdiction of any suit, action or edings by the trustee on behalf of such noteholders or bondholders. venue of any such suit, action or proceeding shall be laid in the y in which the instrument or instruments are filed in accordance subdivision one of this section.

Before declaring the principal of notes or bonds due and payable, ustee shall first give thirty days' notice in writing to the governor, e authority, to the comptroller and to the attorney general of the

d L.1970, c. 714, § 2, eff. Aug. 1, 1970.

340. Notes and bonds as legal investment

notes and bonds of the authority are hereby made securities in all public officers and bodies of the state and all municipalities olitical subdivisions, all insurance companies and associations and persons carrying on an insurance business, all banks, bankers, trust nies, savings banks and savings associations, including savings and ssociations, building and loan associations, investment companies ther persons carrying on a banking business, all administrators, ians, executors, trustees and other fiduciaries, and all other persons ever who are now or who may hereafter be authorized to invest ds or other obligations of the state, may properly and legally invest including capital in their control or belonging to them. Not- anding any other provisions of law, the bonds of the authority are ereby made securities which may be deposited with and shall be re- by all public officers and bodies of this state and all municipali- d political subdivisions for any purpose for which the deposit of or other obligations of the state is now or may hereafter be au- d.

L.1970, c. 714, § 2, eff. Aug. 1, 1970.

41. Exemption from taxation

hereby found, determined and declared that the creation of the ity and the carrying out of its purposes is in all respects for the t of the people of the state of New York and for the improvement r health, welfare and prosperity and is a public purpose, and that thority will be performing an essential governmental function in rcise of the powers conferred upon it by this title. Without limit- generality of the following provisions of this section, property by the authority and used for transportation purposes, property by the authority and used for transportation purposes, and prop- sed for transportation purposes by or for the benefit of the au- exclusively pursuant to the provisions of a joint service arrange- r of a joint facilities agreement or trackage rights agreement shall exempt from taxation and special ad valorem levies. The author- ll be required to pay no fees, taxes or assessments, whether state

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

or local, except special benefit assessments if said property is located in a special benefit district, including but not limited to fees, taxes or assessments on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, or upon the uses thereof, or upon its activities in the operation and maintenance of its facilities or on any fares, tolls, rentals, rates, charges or other fees, revenues or other income received by the authority and the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes and taxes on transfers. This section shall constitute a covenant and agreement with the holders of all bonds issued by the authority. The terms "taxation" and "special ad valorem levy" shall have the same meanings as defined in section one hundred two of the real property tax law and the term "transportation purposes" shall have the same meaning as used in titles two-a and two-b of article four of such law.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1342. Actions against the authority

1. As a condition to the consent of the state to such suits against the authority, in every action against the authority for damages, for injuries to real or personal property or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority or other officer designated for such purpose and the authority has neglected or refused to make an adjustment or payment thereof.

2. An action against the authority founded on tort shall not be commenced more than one year after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the authority within the time limited by and in compliance with all the requirements of section fifty-e of the general municipal law.

3. The authority shall be liable, and shall assume the liability to the extent that it shall save harmless any duly appointed officer or employee of the authority, for the negligence of such officer or employee, in the operation of a vehicle or other facility of transportation owned or otherwise under the jurisdiction and control of the authority in the discharge of a duty imposed upon such officer or employee at the time of the accident, injury or damages complained of, while otherwise acting in the performance of his duties and within the scope of his employment.

4. The authority may require any person, presenting for settlement an account or claim for any cause whatever against the authority, to be sworn before a member, counsel or an attorney, officer or employee of the authority designated for such purpose, concerning such account or claim and when so sworn to answer orally as to any facts relative to such account or claim. The authority shall have power to settle or adjust all claims in favor of or against the authority.

5. The rate of interest to be paid by the authority upon any judgment for which it is liable shall not exceed four per centum per annum.

6. The provisions of this section which relate to the requirement for service of a notice of claim shall not apply to a subsidiary corporation of the authority. In all other respects, each subsidiary corporation of the authority shall be subject to the provisions of this section as if such subsidiary corporation were separately named herein, provided, however, that a subsidiary corporation of the authority which is a stock corporation shall not be subject to the provisions of this section except with respect to those causes of action arising on and after the first of the twelfth calendar month following that calendar month

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

in which such stock corporation becomes a subsidiary corporat[illegible]960, c. 890, authority.

Added L.1970, c. 714, § 2; amended L.1976, c. 745, § 8.

1976 Amendment. Subd. 6. L.19[illegible] c. 745, § 8, eff. Sept. 1, 1976, ad[illegible] Au-[illegible]976, provisions that the provisions of this section which relate to the requirement for service of a notice of claim shall not apply to a subsidiary corporation of the authority.

§ 1343. Agreements relating to payment in lieu of taxes

To the end that municipal corporations, counties and school districts may not suffer undue loss of taxes or assessments:

If the authority acquires property for non-transportation purposes (e. g. for future transportation purposes but not to be so used immediately) the authority except as hereinafter provided, shall pay to the participating county and/or city, town or school district where the property is located, annually, in lieu of taxes, a sum equal to the sum last paid as taxes upon the property prior to the time of its acquisition by the authority. Should such property be subsequently developed and improved but still remain unused for transportation purposes, it shall during such period of disuse for transportation be subject to assessment, at the prevailing method of determining assessments, by the county and/or city and/or school district and the authority shall, based on such assessment, annually, in lieu of taxes, pay to the county and/or city and/or school district an amount fixed by it.

If the authority acquires property for transportation purposes but subsequently uses such property for non-transportation purposes, then the authority shall be required, except as hereinafter provided, to pay annually in lieu of taxes to the participating county and/or city and/or school district wherein such property is located, an amount equal to the sum which the said county and/or city and/or school district would ordinarily be imposed as taxes, pursuant to the prevailing method of determining assessments.

Properties acquired by the authority for transportation and used as such, shall not be subject to the payment of any taxes except that the authority shall pay such property special benefit assessments on the property if it is located in an existing special benefit district.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1344. Interest of members or employees of authority in contracts prohibited

It shall be a misdemeanor for a member of the authority or an officer, agent, servant or employee employed by or appointed by the authority, to be in any way or manner interested, directly or indirectly, as principal, surety or otherwise, in a contract, the expense or consideration thereof is payable out of the funds of the authority.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1345. Fiscal year

The fiscal year of the authority shall begin on the first day of April.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1346. Consent by the state

The commissioner of general services shall have power, in his discretion, from time to time to transfer and convey to the authority, or to one or more participating counties for the use of the authority, and for such consideration as may be determined by him to be paid to the state, unappropriated state lands and lands under water which the authority shall certify to be necessary or desirable for the corporate purposes of the authority.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

Exhibit A — Title 11-D of the Public Authorities Law annexed to Shulman Affidavit.

§ 1347. Separability

If any provision of any section of this title or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section of this title or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of this title are hereby declared to be severable.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

§ 1348. Effect of inconsistent provisions

Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local, the provisions of this title shall be controlling.

Added L.1970, c. 714, § 2, eff. Aug. 1, 1970.

Exhibit B – Section 209, "Resolutions of Disputes in the Course of Collective Negotiations" annexed to Shulman Affidavit.

§ 209. Resolution of disputes in the course of collective negotiations

1. For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement at least one hun-

Exhibit B — Section 209, "Resolutions of Disputes in the Course of Collective Negotiations" annexed to Shulman Affidavit.

enty days prior to the end of the fiscal year of the public

r.

ublic employers are hereby empowered enter into agreements with recognized or certified employee organ- setting forth procedures to be invoked in the event of which reach an impasse in the course of collective nego- Such agreements may include the undertaking by each o submit unresolved issues to impartial arbitration. In ence or upon the failure of such procedures, public em- and employee organizations may request the board to assistance as provided in this section, or the board may such assistance on its own motion, as provided in subdivi- ree of this section.

On request of either party or upon its own motion, as pro- n subdivision two of this section, and in the event the determines that an impasse exists in collective negotia- etween such employee organization and a public employer the conditions of employment of public employees, the hall render assistance as follows:

to assist the parties to effect a voluntary resolution of pute, the board shall appoint a mediator or mediators rep- tive of the public from a list of qualified persons main- by the board;

if the impasse continues, the board shall appoint a fact- g board of not more than three members, each representa- the public, from a list of qualified persons maintained by ard, which fact-finding board shall have, in addition to the s delegated to it by the board, the power to make public mendations for the resolution of the dispute;

If the dispute is not resolved at least eighty days prior to d of the fiscal year of the public employer or by such other determined by the board to be appropriate, the fact-finding acting by a majority of its members, (i) shall immediate- smit its findings of fact and recommendations for resolu- f the dispute to the chief executive officer of the govern- involved and to the employee organization involved, (ii) thereafter assist the parties to effect a voluntary resolution e dispute, and (iii) shall within five days of such transmis- make public such findings and recommendations;

) in the event that the findings of fact and recommenda- are made public by a fact-finding board appointed by the d or established pursuant to procedures agreed upon by the es under subdivision two of this section, and the impasse

Exhibit B — Section 209, "Resolutions of Disputes in the Course of Collective Negotiations" annexed to Shulman Affidavit.

continues, the public employment re. ions board shall have the power to take whatever steps it deems appropriate to resolve the dispute, including (i) the making of recommendations after giving due consideration to the findings of fact and recommendations of such fact-finding board, but no further fact-finding board shall be appointed and (ii) upon the request of the parties, assistance in providing for voluntary arbitration;

(e) in the event that either the public employer or the employee organization does not accept in whole or part the recommendations of the fact-finding board, (i) the chief executive officer of the government involved shall, within ten days after receipt of the findings of fact and recommendations of the fact-finding board, submit to the legislative body of the government involved a copy of the findings of fact and recommendations of the fact-finding board, together with his recommendations for settling the dispute; (ii) the employee organization may submit to such legislative body its recommendations for settling the dispute; (iii) the legislative body or a duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the report of the fact-finding board; and (iv) thereafter, the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

Added L.1967, c. 392, § 2; amended L.1969, c. 24, § 6; L.1970, c. 414, § 1; L.1971, c. 503, §§ 8, 9.

Historical Note

1971 Amendment. Subd. 1. L.1971, c. 503, § 8, eff. June 17, 1971, substituted "one hundred twenty days prior to the end of the fiscal year" for "sixty days prior to the budget submission date."

Subd. 3, par. (c). L.1971, c. 503, § 9, eff. June 17, 1971, substituted "eighty days prior to the end of the fiscal year of the public employer or by such other date determined by the board to be appropriate" for "twenty days prior to the budget submission date."

Subd. 3, par. (e). L.1971, c. 503, § 9, eff. June 17, 1971, added "public" preceding "hearing" in clause (iii).

1970 Amendment. L.1970, c. 414, § 1, eff. May 1, 1970, inserted "appointed by the board or."

1969 Amendment. Subd. 2. L.1969, c. 24, § 5, eff. Apr. 1, 1969, added sentence beginning "Such agreements."

Subd. 3, par. (c). L.1969, c. 24, § 6, eff. Apr. 1, 1969, among other changes, substituted "twenty" for "fifteen" days; inserted "may thereafter assist the parties to effect a voluntary resolution of the dispute"; and substituted "within five days of such transmission" for "simultaneously."

Subd. 3, par. (d). L.1969, c. 24, § 6, eff. Apr. 1, 1969, designated existing text as "(i)" and added clause (ii).

Subd. 3, par. (e). L.1969, c. 24, § 6, eff. Apr. 1, 1969, among other changes, substituted "ten" for "five" days and inserted clauses (iii) and (iv).

Exhibit B — Section 209, "Resolutions of Disputes in the Course of Collective Negotiations" annexed to Shulman Affidavit.

§ 209. Resolution of disputes in the course of collective negotiations

1. For purposes of this section, an impassee may be deemed to exist if the parties fail to achieve agreement at least one hundred twenty days prior to the end of the fiscal year of the public employer.

2. [See, also, subd. 2 below] Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the board to render assistance as provided in this section, or the board may render such assistance on its own motion, as provided in subdivision three of this section, or, in regard to officers or members of any organized fire department of any county, city, except the city of New York, town, village or fire district, as provided in subdivision four of this section.

Exhibit C -- Mailgram from Joseph P. Welch
annexed to Shulman Affidavit.

western union Mailgram

2-042839E299CC2 10/25/76 ICS IPMMTZZ CSP SYRA
1 3154712100 MGM TDMT SYRACUSE NY 10-25 0427P EST

OCT 26 1976

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY W FRANK
508 MIDTOWN PLAZA
SYRACUSE NY 13210

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

3154712100 TDMT SYRACUSE NY 46 10-25 0427P EST
PMS PUBLIC EMPLOYEES RELATIONS BOARD, DLR
MEDIATION AND FACT FINDING 50 WOLF RD
ALBANY NY

ATTN MR ERWIN KELLEY
DEAR MR KELLEY
CONTRACT NEGOTIATIONS HAVE REACHED AN IMPASSE, AND BY AGREEMENT BETWEEN CNY CENTRO INC AND LOCAL DIVISION 580 AMALGAMATED TRANSIT UNION WE RESPECTFULLY REQUEST THAT WE RECEIVED THE ASSISTANCE OF A MEDIATOR, IF POSSIBLE BY THURSDAY, OCTOBER 28, 1976
JOSEPH P WELCH BUSINESS AGENT LOCAL DIVISION 580 WARREN H FRANK PRESIDENT OF CNY CENTRO INC

1630 EST

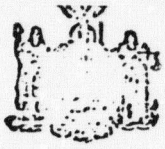
MGMCOMP MGM

w/ff
Joe Welch - 5 copies

EXHIBIT C

TO REPLY BY MAILGRAM, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

Exhibit C — Mailgram from Joseph P. Welch annexed to Shulman Affidavit.



STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

BOARD MEMBERS

ROBERT D. HELSBY
CHAIRMAN
JOSEPH R. CROWLEY
Ida Klaus

APPOINTMENT OF FACT-FINDER

WHEREAS, the New York State Public Employment Relations Board has determined that an impasse exists in the negotiations between the

CNY Centro, Inc. and Amalgamated Transit Union

M76-731

WHEREAS, this dispute comes under the provisions of the Civil Service Law, Section 209,

NOW, THEREFORE, under the authority vested in the New York State Public Employment Relations Board under Section 209 and Section 205.5(k) of the New York Civil Service Law, a Fact-Finder is hereby appointed for the purpose of inquiring into the causes and circumstances of the dispute involving the aforementioned parties and such other parties as the Fact-Finder may deem parties in interest.

I. The Fact-Finder appointed is: Dana E. Eischen
P.O. Box 877
Ithaca, New York 14850

II. Rules Pertaining to the Fact-Finding Procedure

The recommendations of the Fact-Finder shall be signed.

The Fact-Finder shall hold hearings at whatever location, within the State of New York, deemed feasible by the Fact-Finder.

The Fact-Finder shall have the power to subpoena witnesses, documents, papers, contracts, and other evidence he may deem relevant to the subject matter.

The Fact-Finder shall have the power to administer oaths and take testimony and take, or cause to be taken, depositions of witnesses residing within or without this State in the manner prescribed by law for like depositions in civil actions in the Supreme Court. Subpoenas and commissions to take testimony shall be issued under the seal of the New York State Public Employment Relations Board.

The Fact-Finder shall have the power to carry out the purpose of the Fact-Finding procedure.

III. Duties of the Fact-Finder

The Fact-Finder shall inquire into the causes and circumstances of the dispute and after hearing shall immediately transmit his findings of fact and recommendations for resolution of the dispute to the chief executive officer of the government involved, and to the employee organization involved and shall within five (5) days of such transmission make public such findings and recommendations.

The Fact-Finder shall call a meeting as soon as practicable, at his discretion, for the purposes of the fact-finding procedure, and such other activities as in the judgment of the Fact-Finder may be necessary to accomplish his purposes.

Robert D. Helsby, Chairman
New York State Public Employment Relations Board

Dated: December 1, 1976

Exhibit D – PERB Letter, dated 12-1-76
annexed to Shulman Affidavit.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

BOARD MEMBERS

ROBERT D. HELSBY
CHAIRMAN

JOSEPH R. CROWLEY
[redacted]
Ida Klaus

Date: Dec. 1, 1976

Mr. Joseph Welch
Business Agent
617 Wolf Street
Syracuse, New York 13208

Mr. Warren H. Frank
Executive Director
CNY Centro
508 Midtown Plaza
Syracuse, New York

Re: CNY Centro, Inc.

and

Local Division 580,
Amalgamated Transit Union

RE: CASE NO: M76-731

Dear Representatives:

Enclosed you will find the appointment of a fact-finder for the above referenced case. The fact-finder is:

Dana E. Eischen
P.O. Box 877
Ithaca, New York 14850

The fact-finder has been requested by this office to contact you directly to make arrangements for preliminary matters such as the date, time and place of the fact-finding hearing. May we remind you that the fact-finder is limited to five days including hearings and time used for report writing and research unless additional time is expressly authorized by the Director of Conciliation. We hope that by notifying you of these limits in advance you will place before the fact-finder only those issues of high priority and which can be reasonably handled in a limited time.

WHF ✓	JWP
ARB	DMS
RDF ✓	WW ✓
SMS	BMS ✓
JRC	JAD
JTP	

Very truly yours,

Harold R. Newman

Harold R. Newman
Director of Conciliation

Enc.
cc: Dana E. Eischen

EXHIBIT D

Exhibit E — Letter of Bernard T. King to Barry M. Shulman, dated 12-13-76 annexed to Shulman Affidavit.

BLITMAN AND KING
Attorneys and Counselors at Law
500 CHAMBER BUILDING
351 SOUTH WARREN STREET
SYRACUSE, N. Y. 13202

NATHAN H. BLITMAN
BERNARD T. KING
WILLIAM A. PIZIO
CHARLES E. BLITMAN

JULES L. SMITH
JAMES R. LAVAUTE

J. NORMAN CRANNAGE
1908 - 1950

AREA CODE 315
PHONE 422-7111

December 13, 1976

Barry M. Shulman, Esq.
Axenfeld, Webb, Marshall,
Bersani & Scolaro
500 Building
500 South Salina Street
Syracuse, New York 13202

Re: Division 580, Amalgamated Transit Union -and- CNY Centro, Inc.

Dear Mr. Shulman:

I have your letter dated December 1, 1976, regarding the collective bargaining dispute between Division 580 and Centro.

The Capital Grant Agreement of March, 1975, to which the Union and Centro are party, provides for arbitration of "any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements . . . ." Division 580 intends to enforce that agreement between the parties, and to arbitrate the current contract dispute. In view of that intention, the Union will not proceed to factfinding.

Very truly yours,

BLITMAN AND KING

Bernard T. King

Bernard T. King

BTK/fbm

cc: George B. Wright, President
Amalgamated Transit Union, Division 580

Joseph P. Welch, Business Agent
Amalgamated Transit Union, Division 580

Exhibit F — Letter of Dana E. Eischen, Fact-Finder, to Bernard T. King, dated 12-17-76 annexed to Shulman Affidavit.

DANA E. EISCHEN
ATTORNEY AT LAW

TELEPHONE (607) 257-4160

P. O. BOX 877
ITHACA, NEW YORK 14850

December 17, 1976

Bernard T. King, Esq.
351 South Warren Street
Syracuse, New York 13202

Barry M. Shulman, Esq.
500 South Salina Street
Syracuse, New York 13202

Re: PERB Case No. M76-731

CNY Centro, Inc.
and
Local Division 580
Amalgamated Transit Union

Gentlemen:

As you know, I am the fact-finder designated by PERB in the above-referenced case.

Consistent with recent telephone conversations with your respective offices and with the office of PERB's Director of Conciliation, I am scheduling a fact-finding hearing in this matter for 10:00am Monday, January 24, 1977 at the Conference Room, 508 Water Street, Syracuse, New York.

It is my understanding that the parties are in dispute relative to the applicability of Section 13(c) of the Urban Mass Transportation Act in this case. I urge that you exert every effort to resolve these differences, by agreement or adjudication in the appropriate forum, prior to our meeting.

Sincerely,

Dana E. Eischen
Fact-Finder

DEE/bw
CC: Harold Newman
Warren Frank
Joseph Welch

EXHIBIT F

Exhibit G — Letter of Dana E. Eischen, Fact-Finder, to Bernard T. King, dated 1-21-76 annexed to Shulman Affidavit.

DANA E. EISCHEN
ATTORNEY AT LAW
—
TELEPHONE (607) 257-4160

P. O. BOX 877
ITHACA, NEW YORK 14850

January 21, 1976

Bernard T. King, Esq.
351 South Warren Street
Syracuse, New York 13202

Barry M. Shulman, Esq.
500 South Salina Street
Syracuse, New York 13202

Re: PERB Case No. M76-731

CNY Centro, Inc.
and
Local Division 580
Amalgamated Transit Union

Gentlemen:

Confirming our recent telephone conversations, the fact-finding hearing set for January 24, 1977 has been adjourned at the request of Mr. King who has an unanticipated scheduling conflict. This matter shall now go forward at 10:00am, Wednesday, February 9, 1977.

Sincerely,

Dana E. Eischen
Fact-Finder

DEE/bw
CC: Erwin Kelly, PERB

EXHIBIT G

Exhibit H – Affidavit of Warren Woodruff, sworn to on 2-8-77 annexed to Shulman Affidavit.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT
UNION, AFL-CIO
§L& Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc.; Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Indiv idually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBEPT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.;

Exhibit H — Affidavit of Warren Woodruff, sworn to on 2-8-77 annexed to Shulman Affidavit.

ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants

AFFIDAVIT OF WARREN WOODRUFF IN OPPOSITION TO REQUEST BY PLAINTIFF FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:

WARREN WOODRUFF, being duly sworn, deposes and says:

1. That I am the Vice President and Chief Operating Officer of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; that I make this Affidavit in opposition to an application by plaintiff herein for an Order to Show Cause and Temporary Restraining Order which seek to restrain a factfinding hearing set by the New York State Public Employees Relations Board and twice adjourned.

2. That the original date for such factfinding hearing was scheduled on December 21, 1976. Such hearing was then adjourned until January 24, 1977, when your deponent and his staff were in preparation for such factfinding hearing to meet with the PERB factfinder together with representatives of plaintiff's union and to see whatever steps could be taken to resolve the impasse which then existed between such subsidiary corporations of the CNY Regional Transportation Authority and plaintiff.

3. That your deponent was then informed that to suit the convenience of Mr. Bernard T. King, attorney for plaintiff herein, the second scheduled date was then adjourned to February 9, 1977 when factfinding would again take place. That your deponent and his staff once again prepared all data which they determined were in the best interests of proceeding through factfinding to resolve such impasse and negotiate a contract between such

Exhibit H — Affidavit of Warren Woodruff, sworn to on 2-8-77 annexed to Shulman Affidavit.

subsidiary corporations and plaintiff herein.

4. That your deponent actively participated in the last Labor Negotiation and in this Labor Negotiation between such subsidiary corporations and plaintiff herein. That in addition thereto your deponent works on a day-to-day basis with Joseph Welch, business agent of plaintiff, and is directly responsible for those employees of said subsidiary corporations who oversee the union employees, be they mechanics or drivers.

5. In addition thereto, your deponent meets on a regular basis with George Wright, President of Plaintiff, and your deponent has been actively involved in all matters relating to union management relations between subsidiary corporations and plaintiff herein.

6. That in the opinion of your deponent, labor relations at present are at a low ebb; and that your deponent considers that the reason for this is the long time delay which has taken place in attempting to resolve the current impasse and proceed with contract negotiations.

7. That your deponent knows of no time period in the history of such subsidiary corporations which is longer than the current period in which no contract was executed between the respective parties. In 1974, contract negotiations lasted approximately three (3) weeks past the expiration of the contract date; but that at present we are in the fourth month following the expiration of the contract.

8. That your deponent has observed many signs of labor unrest including the following.

9. That the subsidiary corporations recently purchased several buses from AM General. That said buses were by contract to be picked up by employees of such subsidiary corporations and driven from the factory to Syracuse, New York. That in the past a sign-up was posted on the bulletin boards at the garage asking drivers to bid on the basis of seniority for the

Exhibit H — Affidavit of Warren Woodruff, sworn to on 2-8-77 annexed to Shulman Affidavit.

privilege of going to the point of manufacture and driving the buses to Syracuse, New York. This is the procedure which has taken place many times in the past without incident.

10. That in January of 1977, sixteen (16) buses were to be picked up at the AM General manufacturing site in South Bend, Indiana, and driven to the Centro facilities in Syracuse, New York. That a sign-up sheet was posted similar to those which had been posted in the past but that your deponent was shocked by the responses affixed thereto by members of the union. That the responses affixed thereto by members of the union generally regarded the alleged failure of management to have entered into a contract and stated that if there had been a contract the drivers would be happy to pick up the buses. That this was a clear indication to your deponent of management-labor strife. That your deponent immediately called Warren H. Frank, Executive Director of Central New York Regional Transportation Authority and counsel to determine what could be done either to move more quickly into contract negotiations or to inform the union membership that the cause for the delays was on the part of their leadership.

11. That when your deponent contacted counsel, he was informed that factfinding was proceeding and would go forward on January 24th, and then again on February 9th, 1977, and your deponent took this is a sign that such unrest would not go further.

12. That your deponent has today learned of the motion by plaintiff herein and fears that any further delay in meaningful contract negotiations or impasse proceedings under the Taylor law will directly affect the willingness and quality of work by members of plaintiff's union.

Exhibit H — Affidavit of Warren Woodruff, sworn to on 2-8-77 annexed to Shulman Affidavit.

WHEREFORE, your deponent respectfully requests that this Court deny the relief sought by the plaintiff herein.

Warren Woodruff

Sworn to before me this
8th day of February 1977.

Notary Public

Exhibit I — National 13(c) Agreement annexed to Shulman Affidavit.

AGREEMENT PURSUANT TO SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED.

WHEREAS, the Congress recognized in the National Mass Transportation Assistance Act of 1974 that the urban mass transportation industry required operating assistance to maintain service to the public, stimulate ridership and assist communities in meeting their overall development aims; and

WHEREAS, Sections 3(e)(4), 5(n)(1) and 13(c) of the Act require, as a condition of any such assistance, that suitable fair and equitable arrangements be made to protect urban mass transportation industry employees affected by such assistance; and

WHEREAS, the fundamental purpose and scope of this agreement is to establish such fair and equitable employee protective arrangements on a national and uniform basis for application throughout the urban mass transportation industry to those employees and employees represented by the labor organizations signatory hereto; and

WHEREAS, the undersigned American Public Transit Association and the national labor organizations signatory hereto have agreed upon the following arrangements as fair and equitable for application to any urban mass transportation employer ("Recipient") who is a signatory hereto and who has been designated to receive federal operating assistance under the Urban Mass Transportation Act of 1964, as amended ("Act");

NOW, THEREFORE, it is agreed that the following terms and conditions shall apply and shall be specified in any contract governing such federal assistance to the Recipient:

(1) The term "Project", as used in this agreement, shall not be limited to the particular facility, service, or operation assisted by federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project" shall, when used in this agreement, include events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this agreement.

(2) The Project, as defined in paragraph (1) shall be performed and carried out in full compliance with the protective conditions described herein.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this agreement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

Exhibit I — National 13(c) Agreement annexed to Shulman Affidavit.

(4) The collective bargaining rights of employees covered by this agreement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued.* Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this agreement the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

(5)(a) In the event the Recipient contemplates any change in the organization or operation of its system which may result in the dismissal or displacement of employees, or rearrangement of the working forces covered by this agreement, as a result of the Project, the Recipient shall do so only in accordance with the provisions of subparagraph (b) hereof. Provided, however, that changes which are not a result of the Project, but which grow out of the normal exercise of seniority rights occasioned by seasonal or other normal schedule changes and regular picking procedures under the applicable collective bargaining agreement, shall not be considered within the purview of this paragraph.

(b) The Recipient shall give to the unions representing the employees affected thereby, at least sixty (60) days' written notice of each proposed change, which may result in the dismissal or displacement of such employees or rearrangement of the working forces as a result of the Project, by sending certified mail notice to the union representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes, including an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs in the Recipient's employment available to be filled by such affected employees.

At the request of either the Recipient or the representatives of the affected employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this agreement shall commence immediately. These negotiations shall include determining the selection of forces from among the employees of other urban mass transportation employers who may be affected as a result of the Project, to establish which such employees shall be offered employment with the Recipient for which they are qualified or can be trained; not, however, in contravention of collective bargaining agreements relating thereto. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dis-

* As an addendum to this agreement, there shall be attached where applicable the arbitration or other dispute settlement procedures or arrangements provided for in the existing collective bargaining agreements or any other existing agreements between the Recipient and the Union, subject to any changes in such agreements as may be agreed upon or determined by interest arbitration proceedings.

BEST COPY AVAILABLE

pute may submit it to arbitration in accordance with the procedures contained in paragraph (15) hereof. In any such arbitration, final decision must be reached within sixty (60) days after selection or appointment of the neutral arbitrator. In any such arbitration, the terms of this agreement are to be interpreted and applied in favor of providing employee protections and benefits no less than those established pursuant to §5(2)(f) of the Interstate Commerce Act.

(6)(a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period following the date on which he is first "displaced", and shall continue during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his seniority rights to secure another position to which he is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(7)(a) Whenever any employee is laid off or otherwise

deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed" and shall continue during the protective period, as follows:

Employee's length of service prior to adverse effect	Period of protection
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than fifty per centum of each such months based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project, or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the agreement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his employer, he may be required by the Recipient to accept reasonably comparable employment for which he is physically

and mental, qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (c) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this agreement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him for which he is physically and mentally qualified and does not require a change in his place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of his allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his representative, or by final arbitration decision rendered in accordance with paragraph (15) of this agreement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this agreement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or displacement allowance as if he were continuing to perform services in his former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his

family, sick [illegible]e, continued status [illegible] [illegible]tion under any disability or retirement program, and such oth[illegible] employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this agreement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with the Recipient in accordance with this agreement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the travelling expenses for himself and members of his immediate family, including living expenses for himself and his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or his representatives.

(b) If any such employee is laid off within three (3) years after changing his point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within ninety (90) days after the date on which the expenses were incurred.

(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Recipient for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person

and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Recipient shall protect him against loss under such contract, and in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him as his home, the Recipient shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within one year after the effective date of the change in residence.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement within ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser, including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from his residence than was his former work location, or (B) is more than thirty (30) normal highway route miles from his residence and also farther from his residence than was his former work location.

(13) A dismissed employee entitled to protection under this agreement may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this agreement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

Exhibit I — National 13(c) Agreement annexed to Shulman Affidavit.

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 " " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 " " over	12 " "

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which he performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this agreement, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of his dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(15)(a) In the event there arises any labor dispute with respect to the protection afforded by this agreement, or with respect to the interpretation, application or enforcement of the provisions of this agreement, not otherwise governed by Section (12)(c) hereof, the Labor-Management Relations Act, as amended, Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective agreement involving the Recipient and the union, which cannot be settled by the parties thereto within thirty (30) days after the

dispute or controversy arises, it may be submitted at the written request of the Recipient or the union to a board of arbitration to be selected as hereinafter provided. One arbitrator is to be chosen by each interested party, and the arbitrators thus selected shall endeavor to select a neutral arbitrator who shall serve as chairman. Each party shall appoint its arbitrator within five (5) days after notice of submission to arbitration has been given. Should the arbitrators selected by the parties be unable to agree upon the selection of the neutral arbitrator within ten (10) days after notice of submission to arbitration has been given, then the arbitrator selected by any party may request the American Arbitration Association to furnish, from among members of the National Academy of Arbitrators who are then available to serve, five (5) arbitrators from which the neutral arbitrator shall be selected. The arbitrators appointed by the parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. If any party fails to select its arbitrator within the prescribed time limit, the highest officer of the Union or of the Recipient or their nominees, as the case may be, shall be deemed to be the selected arbitrator, and the board of arbitration shall then function and its decision shall have the same force and effect as though all parties had selected their arbitrators. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (5) of this agreement, the board of arbitration shall meet within fifteen (15) days after selection or appointment of the neutral arbitrator and shall render its decision within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision by majority vote of the arbitration board shall be final and binding as the decision of the arbitration board, except as provided in subparagraph (b) below. All the conditions of the agreement shall continue to be effective during the arbitration proceedings.

(b) In the case of any labor dispute otherwise covered by subparagraph (a) but involving multiple parties, or employees of urban mass transportation employers other than those of the Recipient, which cannot be settled by collective bargaining, such labor dispute may be submitted, at the written request of any of the parties to this agreement involved in the dispute, to a single arbitrator who is mutually acceptable to the parties. Failing mutual agreement within ten (10) days as to the selection of an arbitrator, any of the parties involved may request the American Arbitration Association to furnish an impartial arbitrator from among members of the National Academy of Arbitrators who is then available to serve. Unless otherwise provided, in the case of arbitration proceedings under paragraph (5) of this agreement, the arbitrator thus appointed shall convene the hearing within fifteen (15) days after his selection or appointment and shall render his decision within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed. The decision of the neutral arbitrator shall be final, binding, and conclusive upon all parties to the dispute. All the conditions of the agreement shall continue to be effective during the arbitration proceeding. Authority of the arbitrator shall be limited to the determination of the dispute arising out of the interpretation, application, or operation of the provisions of this agreement. The

arbitrator shall not have any authority whatsoever to alter, amend, or modify any of the provisions of any collective bargaining agreement.

(c) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the Recipient's burden to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (Hodgson's Affidavit in Civil Action No. 825-71).

(e) Nothing in this agreement shall be construed to enlarge or limit the right of any party to utilize, upon the expiration of any collective bargaining agreement or otherwise, any economic measures which are not inconsistent or in conflict with applicable laws or this agreement.

(16) Nothing in this agreement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law where applicable, including P. L. 93-236, enacted January 2, 1974; provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under the agreement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit.

(17) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to said claims. The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such addition-

al factual material as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as hereinabove provided by paragraph (15). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information denied in the pre-arbitration period which is relevant to the disposition of the claim.

Nothing included herein as an obligation of the Recipient shall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (10) hereof, nor make any such employer a third-party beneficiary of the Recipient's obligations contained herein, nor deprive the Recipient of any right of subrogation.

(18) During the employee's protective period, a dismissed employee shall, if he so requests, in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient, reasonably comparable to that which he held when dismissed, for which he is, or by training or re-training can become, qualified; not, however, in contravention of collective bargaining agreements relating thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this agreement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered,

or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any such person, enterprise, body, or agency, whether publicly- or privately-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

(20) The employees covered by this agreement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(21) In the event any provision of this agreement is held to be invalid, or otherwise unenforceable under the federal, State, or local law, in the context of a particular Project, the remaining provisions of this agreement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under §13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this agreement only as applied to that Project, and any other appropriate action, remedy, or relief.

(22) This agreement establishes fair and equitable employee protective arrangements for application only to federal operating assistance Projects under §§3(h) and 5 of the Act and shall not be applied to other types of assistance under §5 or under other provisions of the Act, in the absence of further understandings and agreements to that effect.

(23) The designated Recipient, as hereinabove defined, signatory hereto, shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by employees of the Recipient covered by this agreement, in accordance with this agreement and any applicable collective bargaining agreement. The parties recognize, however, that certain of the recipients signatory hereto, providing urban mass transportation services, have heretofore provided such services through contracts by purchase, leasing, or other arrangements and hereby agree that such practices may continue. Whenever any other employer provides such services through contracts by purchase, leasing, or other arrangements with the Recipient, or on its behalf, the provisions of this agreement shall apply.

(24) An employee covered by this agreement, who is not dismissed, displaced, or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced, or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding, shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this agreement.

Exhibit I — National 13(c) Agreement annexed to Shulman Affidavit.

(25) If any employer of the employees covered by this agreement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this agreement, the provisions of this agreement shall apply to such employee as of the date when he was so affected.

(26) Any eligible employer not initially a party to this agreement may become a party by serving written notice of its desire to do so upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory hereto, or their designee. In the event of any objection to the addition of such employer as a signatory, then the dispute as to whether such employer shall become a signatory shall be determined by the Secretary of Labor.

(27) In the context of a particular Project, any other union which is the collective bargaining representative of urban mass transportation employees in the service area of the Recipient, and who may be affected by the assistance to the Recipient within the meaning of 49 U.S.C.A. 1609(c), may become a party to this agreement as applied to the Project, by serving written notice of its desire to do so upon the other union representatives of the employees affected by the Project, the Recipient, and the Secretary of Labor. In the event of any disagreement that such labor organization should become a party to this agreement, as applied to the Project, then the dispute as to whether such labor organization shall participate shall be determined by the Secretary of Labor.

(28) This agreement shall be effective and be in full force and effect for the period from November 26, 1974 to and including September 30, 1977. It shall continue in effect thereafter from year to year unless terminated by the A.P.T.A. or by the national labor organizations signatory hereto upon one hundred twenty (120) days' written notice prior to the annual renewal date. Any signatory employer or labor organization may individually withdraw from the agreement effective October 1, 1977, or upon any annual renewal date thereafter, by serving written notice of its intention so to withdraw one hundred twenty (120) days prior to the annual renewal date; provided, however, that any rights of the parties hereto or of individuals established and fixed during the term of this agreement shall continue in full force and effect, notwithstanding the termination of the agreement or the exercise by any signatory of the right to withdraw therefrom. This agreement shall be subject to revision by mutual agreement of the parties hereto at any time, but only after the serving of a sixty (60) days' notice by either party upon the other.

(29) In the event any project to which this agreement applies is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Recipient or other applicant for federal funds; provided, however, that this agreement shall not merge into the contract of assistance but shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms, nor shall any other employee protective agreement nor any collective bargaining agreement merge into this agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

Exhibit I — National 13(c) Agreement annexed to Shulman Affidavit.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their duly authorized representatives.

AMERICAN PUBLIC TRANSIT ASSOCIATION

By: Stanley K. Hoter, Jr.

Date:

By: B M Stoker

Date: 7/23/75

AMALGAMATED TRANSIT UNION, AFL-CIO

By: D V Maroney

Date: 7-23-75

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

By: Matthew Guzzardo

Date: 7-23-75

Exhibit J – Letter of Royal L. O'Day to Paul J. Fasser, Jr., dated 8-11-75 annexed to Shulman Affidavit.

120

CENTRAL NEW YORK

REGIONAL TRANSPORTATION AUTHORITY

RM 508 MIDTOWN PLAZA • SYRACUSE, NEW YORK 13210 • (315) 471-2100

August 11, 1975

Mr. Paul J. Fasser, Jr.
Assistant Secretary of Labor for
Labor-Management Relations
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Dear Mr. Fasser:

The Central New York Regional Transportation Authority has received the employee protective agreement executed by the American Public Transit Association and transit employee labor organizations on July 23, 1975.

Pursuant to paragraph (26) of that agreement, the Central New York Regional Transportation Authority hereby serves notice of its desire to become party to that agreement for purposes of its application to grants of Federal operating assistance received by the Central New York Regional Transportation Authority under Sections 5 and 3(h) of the Urban Mass Transportation Act of 1964, as amended.

Notice to the original signatories to the above cited agreement is being provided by copy of this letter.

Warren H. Frank
Executive Director

Authority
Royal L. O'Day, Chairman
John W. Stone, Jr., Vice Chairman
J. Gregory Merriam, Secretary
Dr. Kenneth G. Bartlett
J. Harry Goldberg
Harold L. Fisher
Warren H. Frank
Leslie J. Parnell

Exhibit J — Letter of Royal L. O'Day to Paul J. Fasser, Jr., dated 8-11-75 annexed to Shulman Affidavit.

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY

Mr. Paul J. Fasser, Jr.
August 11, 1975

-2-

The Central New York Regional Transportation Authority respectfully requests that all applications submitted for Federal operating assistance under Sections 5 and 3(h) of the Act for the period November 26, 1974, through September 30, 1977, not heretofore certified by the Department of Labor, be certified on the basis of the above cited instrument.

Sincerely,

Warren H. Frank
Executive Director

WHF/jad

cc: American Public Transit Association
1100-17th Street, N.W.
Washington, D. C. 20036
Attention: David E. Fox

Amalgamated Transit Union
5025 Wisconsin Avenue, N.W.
Washington, D. C. 20016

Transport Workers Union of America
1980 Broadway
New York, New York 10023

Railway Labor Executives' Association
400 First Street, N.W.
Washington, D. C. 20001

Brotherhood of Railway, Airline, and
Steamship Clerks, Freight Handlers,
Express and Station Employees
6300 River Road
Rosemont, Illinois 60018

Brotherhood of Locomotive Engineers
1112 Brotherhood of Locomotive
Engineers Building
Cleveland, Ohio 44114

Exhibit K – Letter of Joseph P. Welch to Warren H. Frank, dated 8-15-75 annexed to Shulman Affidavit.

Phone: 422-9589

DIVISION 580

AMALGAMATED TRANSIT UNION

617 WOLF STREET

SYRACUSE, NEW YORK 13208

Affiliated with the
GREATER SYRACUSE LABOR COUNCIL
and AFL-CIO

RECEIVED AUG 19 '75 CNYRTA-SYR. N.Y.

August 15th, 1975

Mr. Warren H. Frank,
Director
CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY
508 Midtown Plaza
East Washington Street
Syracuse, New York 13208

Dear Warren,

Please find enclosed a signed copy whereby Local Division 580 of the Amalgamated Transit Union endorses and requests it be made a party of the National Agreement § 13 C dated July 23rd, 1975 in accordance with paragraph 27 of that Agreement.

Please note that the signatories comprise an up-dated list of Local Division 580's current Union Officials.

With kindest personal regards, I am

Sincerely yours,

Joe Welch

Joe Welch,
Business Agent-Financial Secretary

Enc.
cc: Mr. Warren Woodruff
Mr. James O'Sullivan

FMS

Exhibit K — Letter of Joseph P. Welch to Warren H. Frank, dated 8-15-75 annexed to Shulman Affidavit.

ENDORSEMENT OF NATIONAL OPERATING
SECTION 13(c) AGREEMENT

Local Division No. 580 of the Amalgamated Transit Union, AFL-CIO, hereby endorses and requests that it be made a party to the National Agreement Pursuant to Section 13(c) of the Urban Mass Transportation Act, as amended, dated July 23, 1975, in accordance with paragraph (27) of that Agreement.

Dated: August 12, 1975

Signed: George B. Wright

George B. Wright

(Please print) Name

President

(Please print) Title

Signed: Joseph P. Welch

Joseph P. Welch

(Please print) Name

Business Agent-Financial Secretary-Treasurer

(Please print) Title

Other signatories:

Martin F. Duffy — Martin Duffy, Vice-President

Donald P. Cullen — Donald Cullen, Recording Secretary-Executive Bd.

Phil Tarquinio — Phil Tarquinio, Executive Board Member

William Smith — William Smith, Executive Board Member

Exhibit L – Section 49, Arbitration
annexed to Shulman Affidavit.

SECTION 49
Arbitration

Any grievance that may arise between the officials of the Employer and the local committee of the party of the second part that cannot be satisfactorily adjusted between them shall be submitted to arbitration at the request of either party. The Board of Arbitration for the determining of such disputes shall consist of one arbitrator chosen by the party of the first part and one arbitrator chosen by the party of the second part. These two arbitrators shall meet from day to day for ten (10) days for the purpose of coming to an agreement. If unable to reach an agreement in ten (10) days, these two arbitrators shall select a third man from a panel of seven (7) arbitrators to be obtained from the Federal Mediation and Conciliation Service, and the decision of the majority of the Board thus composed shall be binding on the parties hereto.

The expense of the Arbitration Board shall be borne as follows: Each party shall pay the expense of its own arbitrator and jointly meet the expense of the third arbitrator and such other legitimate expenses as are necessary to successfully carry forth the arbitration.

Either party refusing to name its arbitrator within ten (10) days shall forfeit its case.

The parties hereto agree that upon conforming to the grievance procedure defined by this contract, and upon conforming to the terms of this contract and/or decision of an arbitration board as herein provided, there shall be no lockout on the part of the Employer, and the Union agrees that there shall be no strikes, walkouts or stoppage or slow-down of work.

Exhibit M – Section 1609, Labor Standards annexed to Shulman Affidavit.

1609. Labor standards. — (a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act [§ 1601 et seq. of this title] shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended [40 §§ 276a—276a-5]. The Secretary shall not approve any such loan or grant without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(b) The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z-15) [5 § 133z-15 note], and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c) [40 § 276c].

(c) It shall be a condition of any assistance under section 3 of this Act [§ 1602 of this title] that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended [§ 5(2)(f) of this title]. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

EXHIBIT M

Exhibit N – Affidavit of Russell D. Ferdinand, dated 2-8-77 annexed to Shulman Affidavit.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO OF CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.,; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.;

A F F I D A V I T

Civil Action No.

_____

Exhibit N — Affidavit of Russell D. Ferdinand, dated 2-8-77 annexed to Shulman Affidavit.

ROBERT D. HELSBY, JOSEPH R. CROWLEY and)
IDA KLAUS, together constituting the NEW)
YORK STATE PUBLIC EMPLOYMENT RELATIONS)
BOARD, 50 Wolf Road, Albany, New York,)
12205; HAROLD R. NEWMAN, as Director of)
Conciliation, New York State Public Employ-)
ment Relations Board; and DANA E. EISCHEN,)
as Factfinder, New York State Public Employ-)
ment Relations Board;)
)
Defendants)
----------)

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:

I, RUSSELL D. FERDINAND, being duly sworn on oath, state:

1. I am the Chief Financial Officer of the Central New York Regional Transportation Authority.

2. I have read the foregoing affidavit of GEORGE WRIGHT, President of Division 580, Amalgamated Transit Union, AFL-CIO, the Plaintiff herein, dated February 4, 1977.

3. In Paragraph 24 of his Affidavit, Mr. Wright states:

"The last yearly hourly rate increase received by Plaintiff's members, employees of Centro, occurred on November 1, 1975."

4. The hourly rates received by the Plaintiff's members, employees of Centro, have been increased by twenty cents (20¢) per hour between November 1, 1975 and February 8, 1977.

5. This wage increase was given pursuant to the Cost of Living Formula, which comprises Paragraph f, Sec.26, of the Agreement between Centro and the Amalgamated Union, dated November 1, 1974.

6. This increase was given as follows:

Exhibit N — Affidavit of Russell D. Ferdinand, dated 2-8-77 annexed to Shulman Affidavit.

Effective Dates

December 1, 1975	-----	four cents (4¢)
March 1, 1976	-----	four cents (4¢)
June 1, 1976	-----	three cents (3¢)
September 1, 1976	-----	five cents (5¢)
December 1, 1976	-----	four cents (4¢)

Total: twenty cents (20c/)

Russell D. Ferdinand

Russell D. Ferdinand

Sworn to before me this

5th day of February, 1977.

Notary Public

SUPPLEMENTAL AFFIDAVIT OF BARRY M. SHULMAN,
dated 2-9-77.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT
UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constitu-ting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO
ORDER TO SHOW CAUSE & TEMPORARY RESTRAINING ORDER

SUPPLEMENTAL AFFIDAVIT OF BARRY M. SHULMAN,
dated 2-9-77.

*****
STATE OF NEW YORK * s.s.
COUNTY OF ONONDAGA *
*****

BARRY M. SHULMAN, being duly sworn, deposes and says:

FIFTY-FIFTH: That this is an Affidavit supplemental to one submitted to this Court and sworn to the 8th day of February, 1977, by your deponent herein.

FIFTY-SIXTH: That the reason for this Affidavit is to bring to the attention of the Court a letter of D. V. Maroney, Jr., International President of the Amalgamated Transit Union, such letter being dated March 23, 1976, and being annexed hereto as Exhibit "O". Such letter specifically restricts the terms and conditions of said March 11, 1975 13(c) Agreement to the capital grant application for which such original March 11, 1975 13(c) Agreement was submitted and to a subsequent application by the Central New York Regional Transportation Authority for a capital grant referred to as NY-23-0006.

FIFTY-SEVENTH: That such latter capital grant application is for the purchase of 76 bus shelters under a Federally subsidized program administered by the Urban Mass Transportation Administration (UMTA), known as the Federal Aid to Urban Systems (FAUS).

FIFTY-EIGHTH: That this is further evidence of the statements in the said Affidavit of your deponent dated February 8, 1977, that the Union considers provisions in such 13(c) Agreement annexed to the moving papers of Plaintiff herein, even if it were the operative agreement presently existing between the parties in regard to this litigation, as restricted to an adverse impact as the result of a specific Federal grant or project.

WHEREFORE, it is specifically requested for the aforementioned reasons that this Court deny the relief sought herein by Plaintiff against the Central New York Regional Transportation Authority, it's subsidiary corporations, CNY Centro, Inc., Centro of Cayuga, Inc., and Centro of Oswego, Inc., and that this Court deny the relief herein sought by Plaintiff so that fact-finding may immediately proceed and meaningful steps taken toward the resolution of contract negotiations; together with costs of defending Plaintiff's said application herein and further, together with such other and different relief as this Court deems proper.

BARRY M. SHULMAN

Subscribed and sworn to before me

this 9th day of February, 1977.

Diane Lawlor
NOTARY PUBLIC

DIANE LAWLOR
Notary Public in the State of New York
Qualified Onondaga Co. No. 4630307
My Commission Expires March 30, 1978

Exhibit O – Letter of D. V. Maroney, Jr., to Hon. Paul J. Frasser, Jr., dated 3-23-76 annexed to Shulman Supplemental Affidavit.

AMALGAMATED
TRANSIT UNION
5025 WISCONSIN AVE., N.W.
WASHINGTON, D.C. 20015
KEllogg 7-1645

March 23, 1976

The Hon. Paul J. Fasser, Jr.
Assistant Secretary of Labor
U. S. Department of Labor
Washington, D. C. 20210

MAR 25 1976
CHARTER, N.Y.

Re: UMTA application
Central New York Regional Trans. Authority
Syracuse, New York
(NY-23-0006)

Dear Mr. Fasser:

This is in response to your inquiry regarding the above project and to advise that we will agree to make applicable to the project the terms and conditions contained in the agreement of March 11, 1975, negotiated by and between Central New York Regional Transportation Authority and ATU Local Union 580, copy of which has previously been forwarded to your office.

Accordingly, please be advised that the Amalgamated Transit Union will have no objection if the Department wishes to certify the above project pursuant to §§3(e)(4) and 13(c) of the Urban Mass Transportation Act, with the understanding that the terms and conditions referred to above will apply to this grant, and that the term "Project", as used therein, shall be deemed to cover and refer to the project presently pending for your certification.

Sincerely,

D. V. Maroney, Jr.
International President

DVM:hl
cc: Warren H. Frank, Exec. Dir.
Joseph P. Welch, B. A., L. U. 580

EXHIBIT O

PROCEEDINGS BEFORE HON. LLOYD F. MacMAHON
on 2-9-77.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

In the Matter of

Division 580, Amalgamated Transit Union, AFL-CIO,

Plaintiff-Appellant

-vs-

Central New York Regional Transportation Authority, et al.

Defendants-Appellees

77-CV-45

Proceedings in the above-entitled matter came on before the United States District Court Northern District of New York, at Syracuse, New York, February 9, 1977, before the HONORABLE LLOYD F. MACMAHON, presiding.

A P P E A R A N C E S:

BARRY M. SHULMAN: Counsel for Central New York Regional Transportation Authority and Subsidiary and Directors.

WARRAN H. FRANK: Executive Director of Central New York Regional Transportation Authority.

WARRAN WOODRUFF: Vice-President of Subsidiary Appropriations.

RUSSELL FERDINAND: Chief Financial Officer of Central New York Regional Transportation Authority.

-and-

JAMES LAVAUTE: Attorney for Plaintiff.

JOSEPH WELCH: Business Agency for Amalgamated Transit Unit LD 580.

GEORGE WRIGHT: President of Amalgamated Transit Unit.

THE COURT: Alright, I will hear whoever made the application.

MR. LAVAUTE: My name is James Lavaute, Your Honor, basically this view involves or rights which are arising under Federal Law, under the Urban Transportation Law as amended, basically that Act provides for the granting of assistance to either Municipal Type Authorities or to other Private Transit Companies, money assistance for the purpose of assets and also the providing of monies for operating expenses. With respect to the operation of Mass Transit Systems and under that Act, Your Honor, 1609 Subdivision C as a condition of such assistance is required that the applicant for the grant make suitable and fair arrangements to protect the employees of--for example, in this case the Private Transit Company that was in effect bought out by CENTRA --The Regional Transportation Authority here, and pursuant to that section, Your Honor, the Plaintiff and CENTRA, which is the cooperative body operating the Transit System and the Authority, which is the grant applicant, all executed the so called 13(c) Agreement. That Agreement is attached to our complaint as Exhibit "A". Paragraph 9 of the Agreement, Your Honor, provides for arbitration of labor disputes. If I may just read you

the appropriate section of it--

THE COURT: (Interrupting) Hasn't the agreement expired as of November 1, 1976?

MR. LAVAUTE: That is the Collective Bargaining Agreement.

THE COURT: Aren't you talking about that?

MR. LAVAUTE: No, we are not, Your Honor.

THE COURT: Alright, show me that you have got some valid agreement in effect and we will consider whether you have an arbitration case. The 13(c), what is the expiration date?

MR. LAVAUTE: It was executed March, 1975, it is a condition--the agreement was made as a condition of the grant assistance so that I would assume it would run with the grant assistance which is continuing. The agreement states, Your Honor, in the case of any labor dispute where collective bargaining does not result in an agreement the same may be submitted at the request of either party at the Board of Arbitration and it provides the method for beginning the arbitration process, that is either party appointing its arbitrator within ten days and after giving notice to the other party of submission to arbitration to the other party, then appoint an arbitrator and the two of them select a neutral arbitrator. Now, Your Honor, in the same

paragraph the term labor dispute is defined and it is defined--it states the term labor dispute shall be broadly construed and shall include any controversy concerning wages, salary, or conditions or benefits including health and welfare, sick leave insurance or pension or retirement provisions, the making or maintenance of collective bargaining in the agreement, the terms to be included in such agreement, the interpretation or application of such agreement, the adjustment of any grievance, any claim difficulty or controversy arising--

THE COURT: (Interrupting) Without reading me all of these retense definitions, what is the labor, the condition that is involved here?

MR. LAVAUTE: Well, the fact situation here, Your Honor, is that we have a collective bargaining agreement that expired as of November, 1976, between the Union and CENTRA, that have been unable to negotiate a new agreement. It is the Union's intention to submit that contract dispute, dispute to arbitration pursuant to this language.--

THE COURT: How is that a contract dispute? I mean if you're underlining collective bargaining agreement has expired, how do you have any contractile dispute under it?

MR. LAVAUTE: It may have been misphrasing on my part, it is a dispute or--on what are the terms of a new collective bargaining unit sometimes not as under arbitration, in other words, the parties cannot reach an agreement, for example, the Steelworkers National contract provides for submission--

THE COURT: (Interrupting) Does your contract provide for that?

MR. LAVAUTE: Our 13(c) provides for that.

THE COURT: Are you a party to the 13(c) Agreement or is that between CENTRA and the Federal Government?

MR. LAVAUTE: No, the 13(c) Agreement is between the Union, the Authority and CENTRA.

THE COURT: It is triparty?

MR. LAVAUTE: Yes. CENTRA is really one. The three of us are parties to that agreement. There is also a contract of assistance between the Authority and the Federal Government which the statute provides that this 13(c) Agreement is part of that contract also, but we are claiming our right to arbitrate is under the 13(c) Agreement, the language of which I have just read to you. Now, as I indicated we reached an impasse in negotiations, could not settle the new contract, and the Union wrote to CENTRA indicating our intention to proceed to arbitration, appoint an arbitrator for the

Union. CENTRA takes the position it will not arbitrate this dispute. The procedures of the New York Taylor Law were applicable to the exclusion of this type of arbitration. The Taylor Law provides that in the event of an impasse in negotiations for a new collective bargaining agreement, the parties may ask PERB to invoke its statutory procedures. Those procedures in this type of employees under the statute would require a fact finding, which is a process whereby PERB appoints a Hearing Officer to speak, to take evidence on the dispute and to make known binding recommendations, public recommendations for settling the dispute. If the parties do not agree to accept those recommendations, in this case under the Taylor Law ultimately the final determination of what the new terms of the contract will be remain in the hands of the Authority and CENTRA. In other words, the Authority and CENTRA are saying to us we won't arbitrate this which would result in a neutral party determining the terms of the agreement. They are saying, we say we have to go through the Taylor Law and ultimately under the Taylor Law it is solely up to us what the terms of that agreement will be. Now, as I say, this was their initial position, Your Honor. There is another provision in the Taylor Law which

states that the parties can voluntarily agree, reach agreement as a means of settling these types of disputes and under the Taylor Law the only time, what I have referred to as impasse resolution procedures, that is fact finding and unrelating determinations by the employer, the only times those procedures come into effect is if there is no other agreement by the parties themselves to resolve these types of disputes. Now, initially the employer took the position that the Taylor Law provides us to go through fact finding, we can't arbitrate, we couldn't arbitrate, I don't know where there position is on that now because the Taylor Law provides for what--and we have an opinion by the PERB Council which is attached to our affidavit as Exhibit "B" which recognizes this type of agreement. If he didn't take the position as to whether it did provide for arbitration, he said if it does provide for arbitration of a dispute over a new Collective Bargaining Agreement that would be proper under the Taylor Law and the Taylor Law statutory procedure would not have to come into play, and that is exactly the position we took in this case. We think we should have a right to arbitrate this dispute under our agreement.

THE COURT: How are you harmed if the fact finding

procedures under the Taylor Law are carried out?

MR. LAVAUTE: It is not just the fact finding procedures, it is--which I'll answer that question for you, that it is the entire impasse resolution set-up under the Taylor Law. In other words, fact finding is only one step in that, but the ultimate result under the Taylor Law is that you go through fact finding, if the parties don't agree to see the fact finding report, you have a Public Hearing and it is up to the Hearing body to determine what the terms of the contract will be and that obviously deprives us of our right of a neutral party to determine the terms of the new agreement as far as the fact finding goes, the one step of fact finding, it is, Your Honor, there are a number of ways that that harms us. First of all, it deprives us of our right to have it arbitrated by a neutral person for a final result. It also will delay this entire collective negotiating procedure. In other words, we say that we have the right to arbitrate this dispute and we have the right to have it arbitrated now, but even if someone were to say to go to fact finding first, that is still going to delay further our rights. It is going to be costly, it is going to be really a repetition of what an Arbitration Hearing will be. You are going to have to hire a commission to give expert testimony

and those sort of things you would do in arbitration. You would have to do them twice in the fact finding procedure. It will also delay whenever we could ultimately get an arbitration award, setting up the new Collective Bargaining Agreement telling us what the terms would be, that would be delayed by this fact finding procedure. The fact finder has to have a Hearing, they are very involved procedures, it is not a simple matter and he is going to take time to consider them and issue his findings, and at that point the Taylor Law procedures are not quite over.

THE COURT: Can you point with more exactness the provisions of your 13 (c) Agreement on which you are relying?

MR. LAVAUTE: It begins on page--Exhibit "A" to our varified complaint begins on page 182. Do you have that page?

THE COURT: Yes, I have.

MR. LAVAUTE: Paragraph 9, Your Honor.

THE COURT: Let me read it. Alright.

MR. LAVAUTE: It goes over to the next page to define the labor dispute which would include this sort of dispute. I'll apologize for the editing on that copy.

THE COURT: That is alright.

MR. LAVAUTE: Now, this was an important part of the Urban Mass Transportation Act. Your Honor, right in the first--the first section or rather 1609 as I indicated sets out the requirements of protective arrangements and subdivision (c) requires those as I indicated, legislative history also impasses, the necessity of protecting the rights of what at the time when this act was passed would have been private Transit Company Employees. Now, as Your Honor knows, under the Taft Hartley Act they would have the right to strike if they desired it. The legislative history, the House report on that question indicates that one of the very important considerations was the impact which public acts which since have existing companies would have on the statutes of bargaining rights of employees. That is one of the things that was going to happen under this new Urban Mass Transportation Act. In the case of these employees, they became public employees, they lost the right to strike, the ultimate bargaining weapon. They lost it because the Taylor Law says you cannot strike and as I indicated it left the ultimate determination of a new agreement in their--except for police and fire, in the hands of the public employer. So, the only conceivable way that the employees could be protected now, give up their rights that they had under

the Federal Labor Law, as in some who argue this isn't a real substitute for the right to strike is binding arbitration of a dispute between the parties when they cannot agree, that is the only substitute that gives them any sort of right which is near equivalent to a right to strike.

THE COURT: What is your basis, how do you get out from under the Taylor Law? Does this 13 (c) Agreement take you out from under the Taylor Law?

MR. LAVAUTE: Section--

THE COURT: (Interrupting) Do you say the Taylor Law it does that, by saying you have fact finding, but if there is an agreement you follow the agreement?

MR. LAVAUTE: That is right, Your Honor, and Mr. Bare (Phonetic spelling) says that in his letter.

THE COURT: Yes, I read his letter.

MR. LAVAUTE: Now, that would take us out from the Taylor Law. In the event there is a question as to what are the rights under the Federal Law, under the 13 (c) Agreement, pursuant to the Urban Mass Transportation Act, in this case, fortunately the Taylor Law provides for such an agreement. I'm sure they didn't--they have the Mass Transportation Act, it does provide--

THE COURT: (Interrupting) Do you--if say they are

conflicting, the Federal Law controls --

MR. LAVAUTE: (Interrupting) I would say in this case, yes, Your Honor, but there is no conflict of this case. Now, there is another point which the Company raised in its papers, Your Honor, I received them shortly before coming over here, but there is an argument made for the first time that I'm aware of in this dispute that the 13 (c) Agreement which we are relying on, has been superseded by a National 13 (c) Agreement between the International Union and some other body. I think probably Federal Body representing Transit Authorities or something, but at any rate, Your Honor, that National Agreement, and it appears as an Exhibit to Mr. Shulman's papers--

THE COURT: (Interrupting) Under the herein's or hereto's or thereat's or where? I found those papers utterly mind-boggling.

MR. LAVAUTE: It appears as Exhibit "I" to Mr. Shulman's answer, is it?

MR. SHULMAN: Well, it is, I am posing an affidavit.

MR. LAVAUTE: At any rate, Your Honor, the context made in their papers is that the 13 (c) Agreement which we rely on is no longer applicable, it has been superseded by a National Agreement which--

THE COURT: (Interrupting) What do you say?

MR. LAVAUTE: We say that that is not true, that

the National Agreement by its term preserves the rights under the existing agreement for arbitration and that was one of the conditions of the International Union in agreeing to this so-called National 13 (c) Agreement.

THE COURT: What clause is that, the Savings Clause?

MR. LAVAUTE: I don't follow you, Your Honor. The clause I am reading appears as a paragraph 4, it is an asterisk at the bottom of the page.

THE COURT: Paragraph 4 of what page?

MR. LAVAUTE: Page 2 of the so-called National "A" Exhibit which is Exhibit "I" to their papers.

THE COURT: What about the second sentence?

MR. LAVAUTE: In the asterisk, Your Honor, you are reading from--

THE COURT: (Interrupting) Beyond the asterisk provides the Collective Bargaining Agreements are still in effect or words to that import, paragraph 4, the second sentence--

MR. LAVAUTE: Provided, where the provisions that I was referring to, Your Honor, you notice there is an asterisk--

THE COURT: I know, you were--yes.

MR. LAVAUTE: That, let me just read the clause to

you to answer your question. Well, we are not talking about rights under Collective Bargaining Agreements--

THE COURT: (Interrupting) But this is.

MR. LAVAUTE: Well, the provise refers to the Collective Bargaining Agreement, but the asterisk--

THE COURT: (Interrupting) And or existing Collective Bargaining Agreement, applicable laws, policies or existing Collective Bargaining Agreements. Now, the Agreement you're talking about, 13 (c), is not a Collective Bargaining Agreement, is it?

MR. LAVAUTE: That is right.

THE COURT: Is it?

MR. LAVAUTE: No, it is not, but the asterisk footnote covers the 13 (c) Agreement that was expressly inserted into the National Agreement to preserve the rights--

THE COURT: (Interrupting) Where is the footnote?

MR. LAVAUTE: At the bottom of page 2.

THE COURT: Alright, I have got it.

MR. LAVAUTE: So, that is our rights under the 13 (c) Agreement. So, how you can say this National Agreement supersedes the 13 (c) Agreement which originally signed, which doesn't say is the case anyway, they preserved under that Agreement. My understanding, there is a letter from the Secretary of

Labor they have that understanding, and that was a condition of the Union signing of this National Agreement, because that was a big issue, what to do with these local issues, arbitration issues. As I indicated, Your Honor, we are being deprived of our rights here to arbitrate this dispute. I think the arbitration language is clear, I know you would be familiar with the Federal Law ruling on the interpretation of arbitration agreement, this is as broad of an arbitration agreement I have ever seen, and it provides for the arbitration we have had a right to proceed to in this case. And, we ask that this Court restrain the PERB statutory procedures and order the Company to proceed to arbitration.

THE COURT: Alright, Mr. Shulman?

MR. SHULMAN: Thank you, Your Honor. I would like to first recall to the Court the reason why we have been brought here today, and that is the Union as Plaintiff has sought to restrain a PERB fact finding Hearing on the basis that the irreparable injury will result to the Union and to its membership if fact finding proceeds. On the basis of that, we received papers late yesterday afternoon restraining the fact finding which was to have gone forward this morning at ten o'clock. I would like to first submit on

several levels why irreparable injury would not have resulted and why we shouldn't have been able to proceed with fact finding. This is a complicated subject matter, and I apologize to the Court in the difficulty of our explaining it in our papers. I would like to start by stating that fact finding is one step which the Taylor Law permits in a series of impasse procedures which takes place under the statutes as during the course of collective negotiations. The fact finding is not something that takes place after Collective Bargaining has broken down, but is specifically by the statute one step that is taken during the course of Collective Bargaining. This is not our first labor negotiations with Plaintiff. We have always had 13 (c) Agreements and at the same time we always followed the Taylor Law. Two years ago when we were unable at the end of the expiration of a contract to reach terms with the Union, we went to a mediator appointed by PERB, which is the New York State Public Employment Relations, and that mediator was able to resolve our difficulties. This year, the Union and the Management participated in again applying to PERB for the appointment of a mediator and as an annex to our papers that was a joint application under the Taylor Law. There is no difference between mediation and fact

finding in this regard.

THE COURT: Is that fact so that the Union joined in an application for a hearing under PERB?

MR. LAVAUTE: No, that is not a hearing.

THE COURT: For fact finding? Not for mediation, but isn't fact finding one of the steps in mediation?

MR. LAVAUTE: No, that is not correct, Your Honor, there are a number of steps in the Taylor Law. You can apply to PERB for a mediator and a mediator does come in and tries to get the parties to agree, but has no binding power to do anything but to try to hammer out an agreement.

THE COURT: Isn't the next step fact finding?

MR. LAVAUTE: Under the Taylor Law.

THE COURT: But didn't you invoke the Taylor Law procedures?

MR. LAVAUTE: It is--that is a matter of symmetrics.

MR. SHULMAN: Your Honor, could you look at Exhibit "C"?

THE COURT: It makes a difference whether they invoked these procedures. Alright.

MR. SHULMAN: If the Court please, this is also the provision of the Taylor Law to which I'm referring, it is 3 (a) and (b).

THE COURT: Let me get a look at this. Alright.

MR. SHULMAN: Not only was there a joint request made that a mediator be appointed by PERB, but both sides actually met with Professor Markowitz on three successive dates for lengthly sessions with the mediator, so both sides this year in this contract knowingly put themselves under the Taylor Law as recently ago as October of 1976, October or November, and those facts are also alleged on paper. When mediation failed, we then asked PERB to appoint a fact finder. This goes to the Union's motion that irreparable injury would be suffered to their membership if fact finding isn't stated immediately. The timetable is this, we applied to an Attorney I think who is Danny Eishen (Phonetic spelling) was appointed by PERB as the fact finder. The first fact finding meeting was suppose to have taken place on December 21, 1976. We asked, and at that point, Mr. King indicated as Counsel to the Union that the Union would raise a 13 (c) argument and they wanted to go to arbitration under 13 (c) and would not submit to fact finding, in that, an application to that effect would be made in either this Court or State Court. No application was ever made, and we again requested the appointment of a PERB fact finder. That was done by PERB, Mr. Eishen (Phonetic spelling)

again was to meet with the parties on January 24, 1977. January 24 is a Monday, the Friday before Mr. King telephoned Mr. Eishen (Phonetic spelling), I was not a party to that telephone call, and it appears from Mr. Eishen's (Phonetic spelling) letter which is annexed to our papers that because of a conflict in Mr. King's scheduling, the hearing before Mr. Eishen (Phonetic spelling) would be postponed from January 24 until this morning, and it was only last Friday that we learned that a motion was going to be brought and it was only yesterday afternoon that we got these papers. This has been pending for almost three months and I submit to the Court that if there is irreparable injury, it is being suffered by our inability to go forward with fact finding. If we were to go forward with the PERB fact finder, hopefully we could resolve our contract disputes. It is not in opposition preproposing fact finding would be a failure, everytime you take these steps you are optimistic that--

THE COURT: (Interrupting) That is the purpose of these procedures under the Taylor Law, what about his argument that ultimately if all of these interim steps fail the terms of a contract will be dictated by the Legislature?

Mr. SHULMAN: That is true, Your Honor, within a

certain context, not by the Legislature but the Hearing Board of the Authority involved. In the first place, the Taylor Law does permit our employees to strike if provoked.

THE COURT: Whatever the procedures, ultimately isn't he deprived of his right to sit down and Collective Bargaining.

MR. SHULMAN: But, Your Honor, the end of our fiscal year is March 31. If we were not to mandate a contract that would only take place after a public hearing and only we would be able to mandate it until March 31.

THE COURT: That doesn't answer my question whether you have public or private hearings, whenever the procedures ultimately--isn't he--isn't the Union deprived of its right to reach an agreement by Collective Bargaining?

MR. SHULMAN: The Legislature of the State of New York felt where public employment was concerned various steps should be taken.

THE COURT: That is not the point. Obviously the Legislature thought that or they wouldn't have passed the Taylor Law, you are not answering the question.

MR. SHULMAN: It is true that if the fact finding were to fail our Board could mandate a contract.

THE COURT: And the effect is to deny the Union the right to reach an agreement by Collective Bargaining?

MR. SHULMAN: The fact of that is to take place only after Collective Bargaining has failed and we are still in the course of Collective Bargaining, and actively pursuing it, so I submit to Your Honor in the first place we should be permitted to go ahead with fact finding, it can only help. If we had gone ahead with it when it was originally scheduled, there is no indication of contingent potential harm here.

THE COURT: Conversely, who are you heading, who represents the Board here, this CENTRA?

MR. SHULMAN: I do.

THE COURT: How are you harmed by going to arbitration?

MR. SHULMAN: We are not mandated, I can tell you a couple very good reasons why we possibly would be harmed.

THE COURT: Why isn't it a sure faster way?

MR. SHULMAN: It would be surer and faster then Court proceedings, but it is not surer and faster then the Taylor Law proceedings which are designed specifically to submit these things through.

THE COURT: Isn't arbitration designed to that

same end?

MR. SHULMAN: We are not being compelled by law to arbitrate.

THE COURT: That is the question before me.

MR. SHULMAN: We will give you our contentions in that regard. There is nothing really which compels us to arbitrate as long as we are already in the Taylor Law. We have been in the Taylor Law since October, we met with the mediator appointed by PERB as long ago--all of these steps have been taken and in my judgement it would be faster to move through the process then to commence arbitration and to litigate, have the point of whether we are actually being compelled to arbitrate or not. In that regard, I think we have to spend a moment on the 13 (c) Agreement themselves, and I would like to try to refute some of the points raised by Mr. Lavaute. There are several different kinds of 13 (c) Agreements. There are 13 (c) Agreements which are the result of capital projects subsidized by the Federal Government and 13 (c) as a result from operating, for example, in March, 1975, 13 (c) Agreement which was an annex to the Plaintiff's complaint, if the Court would look at the very top, the Court would see the reason that the 13 (c) Agreement was executed was to enable, to the Central New York Regional Transportation Authority

to purchase replacement buses, bus shelters and certain other assets which we were acquiring from a bus company known as the Syracuse and Eastern. The reason there is no expiration date on that 13 (c) Agreement was that that 13 (c) Agreement was executed pursuant to Title 49 (usc) 1609 (c) in order to protect the members of the Union, members of the Plaintiff from any adverse effect caused by this capital grant, that because we were purchasing these buses and purchasing bus shelters, if we had, for example, been purchasing computer equipment, that sort of an--if that purchase which was Federally subsidized as project adversely affected our membership we would be compelled to organize the adverse effect of that Federally subsidized project, the purchase of those buses and the purchase of those bus shelters on the membership of Plaintiff. Recently, we purchased seventy-six bus shelters and entered into a 13 (c) Agreement which again protected the employees of the Plaintiff and members from any adverse affect which might be caused by the Federal funded project. In addition, Your Honor, we have operating grants. We were subsidized in our operation. Fifty percent by the Federal Government is a matching grant against State and Local operating subsidy monies. Everytime we receive one of those operating grants we

execute another 13 (c) Agreement. That the fact of that project the money comes to the Central New York Regional Transportation Authority as an operating grant, will not serve to displace or adversely effect any member of the Plaintiff. These are agreements which are executed merely for that purpose, and even paragraph 9 of the old agreement to which Mr. Lavaute referred the Court has modified at the end specifically in that labor dispute clause as protecting employees who are adversely effected by the project, that is the language of that paragraph 9. Since then, in November of 1975, we executed a National 13 (c) Agreement which has vastly different clauses then that read, and I submit to Your Honor that the letter from Martin Bare (Phonetic spelling) who is one of the Counsel to PERB did not as Mr. Lavaute implied indicate that the 13 (c) Agreement which is the one that compels us to arbitrate this sort of dispute. It merely states that the Taylor Law does permit employers and employees to enter into contract and whether there was such a contract.

THE COURT: This is what it says right on its face. I don't follow, it is your argument right on its face, it says it--

MR. SHULMAN: (Interrupting) It says what?

THE COURT: Paragraph (c) that you shall arbitrate--

MR. SHULMAN: (Interrupting) Not everything.

THE COURT: Labor disputes--

MR. SHULMAN: (Interrupting) But you have to go to the definition of labor dispute, over the page and notice the last phrase.

THE COURT: Page what?

MR. SHULMAN: Page 183, Your Honor. I'm sorry, Your Honor, that is to their pleading.

THE COURT: That is annexed to the Plaintiff? One eighty-three you said?

MR. SHULMAN: Yes, page 183 of the Exhibit.

THE COURT: What paragraph?

MR. SHULMAN: If you look at the first full paragraph, the end of the large paragraph at the top.

THE COURT: The term labor dispute shall be broadly construed and shall include any controversy concerning wages, salary, working conditions or benefits.

MR. SHULMAN: I refer the Court to the last few words of the sentence for protection of employees effected by this project and what is this project in 1975, lets a law we entered into, the new 13 (c) project is the replacement of buses, bus shelters, radios and fare boxes. If the Court would look on page 179 of the same Exhibit, it tells exactly what the project is--ten

commuter subscription buses, ten Central Business District Circulation buses, the whole concept of the 13 (c), I don't even agree, Your Honor, that this 13 (c) Agreement that bares on it, but the whole concept of the 13 (c) Agreement is to protect employees from adverse impact as a result of Federally funding projects. It is not to mandate arbitration, inter-arbitration at the expiration of labor contracts. As I said, we executed one recently with different provisions that related to the purchase of 76 bus shelters, and the Union under Section 13 (c) of the UMTA Act is protected, those bus shelters if that were applicable, if you conceive of a situation where it would happen would not adversely effect the employees and I submit to Your Honor, if Your Honor would look at his letter, at the letter of Bernard King which prompted the letter of Mr. Bare (Phonetic spelling), this is for the protection of employees effected by the project was specifically and I think intentionally omitted from Mr. King's letter, and Mr. Bare (Phonetic spelling) who had never seen this 13 (c) Agreement just quoted the same where it starts dot dot dot.

THE COURT: Which paragraph, that definition project?

MR. SHULMAN: One seventy-nine which is the first page of that 13 (c) Agreement.

THE COURT: Which paragraph?

MR. SHULMAN: The BVB again were as the Central New York--

THE COURT: (Interrupting) I can read it, I'll just refer to it.

MR. SHULMAN: Now, Your Honor, the Plaintiff knows this and I would like to refer Your Honor to Exhibit "O" of the supplemental affidavit that was given to Your Honor this morning. This is a letter dated March 23, 1976 from Plaintiff's International President.

MR. LAVAUTE: I don't have that attached to my Exhibits.

MR. SHULMAN: If you will look at the supplemental affidavit it is there, look at the supplemental affidavit. There, lift it up it is in the back, it is a letter from the President of the Plaintiff's International. Dear Mr. Fasor (Phonetic spelling) to the section of labor, responding to your inquiry regarding the above project and to advise you that we will agree to make applicable to the project the terms and conditions contained in the agreement of March 11, 1975, that is the agreement that we had annexed to these papers. What is happening here is the purchase of 76 bus shelters. Negotiations by and between Central New York Transportation Authority and the Local Union

580, a copy which I previously forwarded to your office. Accordingly, please be advised that the Amalgamated Transportation will have no objection in the Department's wish to certify the above project with the understanding that the terms and conditions referred to above will apply to this grant and that the term project as used therein shall be deemed to cover and refer to the project presently pending for your certification. In other words, Your Honor, before UMTA monies could flow, UMTA needs a certification by the Union under 13 (c) of the Act, and it is clear that that Agreement or any repetition of that Agreement applies only to the flow of monies which relate either to a capital or to an operating project. This is not that kind of agreement, and I can further distinguish it within the Taylor Law. Before I do, I would like to make one last point as to why there is irreparable injury. That is to relate to Your Honor the case law in New York State pursuant to the Taylor Law which mandates our Transportation Authority even after a contract is expired to maintain the same benefits, the same salary, the same step increases as though a contract were in effect. We are mandated to do that so that the--

THE COURT: (Interrupting) Yes, but that doesn't

let them improve the situation--

MR. SHULMAN: (Interrupting) Except that letting us negotiate and going into a fact finder would have. The reason that I really raise this is that in their affidavit which is factually incorrect which when they stated they got no increase in salaries in 1975. We have put this in our affidavit to show they have gotten--

THE COURT: (Interrupting) It is not even germane.

MR. SHULMAN: I agree. In the Taylor Law, well, it is first our position that 13 (c) Agreement for reasons which I have given to you in addition to one other which I'll mention is not the kind of agreement which the Taylor Law permitted employer employees to enter into, and thereby authorizing all impasse procedures under the Taylor Law. It was not our intention nor the Unions that the 13 (c) be such an instrument, we have not resorted to this argument in the past, we have always utilized the Taylor Law Provisions. This 13 (c) Agreement, even the clause, even the paragraph 9 in what I consider to be agreement, which is no longer in effect states that those provisions take effect in the case of any labor dispute or collective bargaining does not result in agreement. Impasse procedures are procedures

which are taking place during Collective Bargaining not when Collective Bargaining does not result in agreement because of this language that this takes effect in a labor dispute where Collective Bargaining does not result in agreement. I feel that the Taylor Law provisions are likewise not met because these too in Section 2092 state--I gave the Court my book, so I'm just trying to find it. State public employers are hereby empowered to enter into written agreement with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of Collective Negotiations. See, Your Honor, we never signed any agreement under the Taylor Law to resolve disputes by arbitration in the course of Collective Bargaining. We have always worked under the Taylor Law including this year. The 13 (c) Agreement mandates arbitration when all else has failed and the employers are adversely effected because of a Federal project. There has been no reference to the Taylor Law, there has been no intent on either side to circumvent the provisions of the Taylor Law to an agreement specifically drawn for that purpose. What bothers us is we were ready to go to fact finding in December. We were ready again to go to fact finding in

January, the fact finder was not told by Mr. King we would not go in January, he was told he had a scheduling conflict. Then fact finding was set for today. I have been informed by PERB that their fact finders are ready to meet with us and if our papers, the affidavit or Warren Windruff (Phonetic spelling) who is our General Manager and has indicated some of the problems which he feels we are presently experiencing because the Union membership wants to know why have we gone so long without a contract. We haven't even been able throughout this three month period to sit down and Collective Bargain. We have been trying to get a fact finder appointed and it is our fear that unless we are able to act as expeditiously as possible, irreparable damage will be done to us. In addition to all of the proof, Your Honor, I don't know honestly why we are in Federal Court. We are an Agency of the State of New York Public Benefit Corporation and defined under our enabling Legislature as a State Agency we entered into an Agreement with a Local Union and we, in the Local Union, endorsed a National 13 (c) Agreement after that with vastly different provisions. The Agreement is an Agreement entered into between two New York State residents, one of which is an Agency of the State of

New York, and I have raised certain Constitutional arguments. What I really believe is happening, although I have no basis for feeling, I feel this way, but I have no proof of it, is that the Union Nationally is trying to make this a test case and interpret the 13 (c) Agreement as obliging Transportation Authorities throughout the United States to Collective--to arbitrate a breakdown in Collective Bargaining. It just doesn't apply here in Syracuse. We have the Taylor Law, we have been working under the Taylor Law, we have been anxious since December to resolve all impasse procedures. Raising the 13 (c) Agreement was late on the one hand because we have already been going through all this, and premature on the other hand because they haven't been damaged, there is every hope that we can go through fact finding and inappropriate if there were a third hand because 13 (c) just does not apply to the procedures before this Court, so on the basis of all of this, I would respectfully request that this Court vacate the stay, permit us to go forward with fact finding and in addition to that, this Court deny all of the reliefs sought in the complaint which was filed by the Plaintiff on the basis that they have waived their rights, they have been proceeding under the Taylor Law, that this Court lacks jurisdiction and

that the various merits should be tested, if anywhere, before the Public Employee Relations Board of the State of New York.

THE COURT: I don't quite understand why you say we lack jurisdiction.

MR. SHULMAN: It is true that there is a Federal statute which is Title 491609 (c) which was part of the Urban Mass Transportation Act. That Act mandated that contracts be entered into between the various Authorities and private companies receiving Federal grants of aid for capital or operating purposes and pursuant to that and because we are receiving not only Federal monies but also State monies and Local monies, mandated needed to match the Federal monies, all we have is a contract between two New York State residents, and the interpretation of that contract. In addition, Your Honor, we are a State Agency of the State of New York by definition in our enabled status. I have raised in my papers the Eleventh Amendment of the Constitution in so far as our powers are concerned in relating to the employees. This has been defined as a Governmental Function. They are public employees in the State, and the State of New York has created a procedure whereby within the State, questions such as this may be tested, and there are two places for that, one might have been,

for example, had we gone to fact finding and the Union not showed up, we could have certified to PERB and this question would have been disposed of within the State of New York before that body. Secondly, Article 75 of the New York State Civil Practice Law and Rules creates an entire body of State law in State procedure regarding the compelling of arbitration and the various procedures to be taken against the State Authorities, as well as Private Companies, if a demand to arbitrate is made, terms of how the Court interprets that and what the various procedures are, time limits and that sort of thing. I realize there is--that the Federal question is alleged to have been raised and this effects Interstate Commerce, and there was a statutory section in the U.S. Code which prompted the drafting of that Agreement, but that Agreement is totally aside and apart from the statute. It has to be submitted each time to the Union National Organization to determine whether or not it complies and is satisfactory to them.

THE COURT: Why is there a Federal question jurisdiction--

MR. SHULMAN: (Interrupting) I don't believe that Interstate Commerce has been effected, which has been alleged. I don't believe that there is any Federal statute to my knowledge which would give

Federal question jurisdiction.

THE COURT: Doesn't the Federal Statute mandate this 13 (c) Agreement?

MR. SHULMAN: But it doesn't mandate its form and its specific language.

THE COURT: It mandates such an agreement, doesn't it?

MR. SHULMAN: It mandates that there be an agreement for protection of the employees.

THE COURT: Anyone else wish to speak on that side?

MR. LAVAUTE: May I respond, Your Honor, I think I should clear up some statements of--I guess you would call them statements of Law by Mr. Shulman as to what the employees rights are in the Taylor Law. He stated they could strike in that provocation, I wish Mr. Bare (Phonetic Spelling) were here to hear that because that is--they do not have the right to strike under the Taylor Law under any circumstances.

MR. SHULMAN: Excuse me, could I take that Law book back?

MR. LAVAUTE: So they don't have that right, Your Honor, as they had under the private situation. Now, Mr. Shulman has stated, I guess the way he wants to characterize, this--we are in the course of Collective

Bargaining dispute, we are still bargaining and we haven't reached impasse yet. We haven't reached a point where we can't agree, that is absolutely wrong. The Taylor Law states that mediation and fact finding only comes into play when there is an impasse, and an impasse means the parties can go no further and they can't reach an agreement, they are at odds with each other. The mellograph question to PERB that Mr. Shulman showed you, I--

THE COURT: (Interrupting) Calls it an impasse--

MR. LAVAUTE: (Interrupting) Calls it an impasse, it is an impasse, there hasn't been any bargaining, there is just no way to go. Now, mediation, the idea that by going to mediation we have invoked the procedure of the Taylor Law, that is absolutely wrong. Mediation is used in the private sector disputes as I am sure you well know, Your Honor. If you can't reach an agreement, you have a mediator. In the private sector, he is appointed, any State mediation that is required by the statutes. In the public sector for the parties in the same type of situation, they have reached a dispute, they want to make a good faith effort to reach a voluntary agreement, and mediation has been one of the means to attempt to do that, so they want a mediator. PERB will appoint a mediator if you ask them. It would be anybody around the State, write to

PERB and ask for a mediator. That is not to say we are giving up our rights to have this point arbitrated under the agreement if ultimately we can't reach a voluntary agreement, not saying we have raised all of our contract rights because we asked for a mediator. Just so Your Honor doesn't misunderstand, there was no joint application for a fact finder. The request for the fact finder was made by the employer, we didn't join in that request, and as Mr. Shulman indicated Mr. King, who is in my office, wrote a letter to the Authorities and stated we will not go to fact finding, we have the right to enter arbitration under the 13 (c) Agreement. I think if Your Honor reads the section of the Taylor Law which is sort of on the back of an Exhibit, it is Exhibit "B" to their papers, but it is on the back, so that I'm not sure if you would see it, it states that the procedures, the fact finding procedures go into effect on impasse, and it says public employers empowered to enter into written agreement with recognized or certified organization Unions setting forth the procedures to be invoked in the event of disputes which reach an impasse. Obviously, we reached an impasse, we haven't met for three months, the idea, Your Honor, that this enforcement of the 13 (c) Agreement was an afterthought or a

last minute attempt on the Union's part or whoever, we are not seeking--we are not in conspiracy with the International Union on this, it was our understanding, I mean, Mr. Shulman has indicated that Mr. King asked for an adjournment because of a conflict. He never mentioned the fact that we were not going to go to fact finding. I know arrangements that were made, it was Mr. King's understanding that the fact finding was going to be adjourned until we could get into Court to get this thing resolved, to get our rights under the arbitration agreement resolved. Mr. Eishen (Phonetic spelling) wasn't aware of that. Mr. King talked to the PERB Representative about this holding off of the fact finding until we get the question answered as to our rights under 13 (c). Apparently, Mr. Eishen (Phonetic spelling) didn't get word from PERB and Mr. King had in the meantime scheduled another matter, and had another conflict, that is why it was adjourned because of a conflict with Mr. King, it was our understanding that the fact finding was postponed until the question was resolved. As far as the time it took to get into Court, it took time, it wasn't something we could do overnight. Now, Your Honor, I think you should carefully read this 13 (c) Agreement. Mr. Shulman indicates that it only applies, for example,

if you purchase buses with Federal monies. I guess after the buses come in they can do anything they want under his interpretation, but the statute as I indicated before, the purpose of the 13 (c) Agreement was specifically aimed at the possible prejudice to the rights of the employees to bargain where Federal money was given to State, and public type authorities or bodies who took over the Private Transit Companies. That is the purpose of protecting the rights of employees, and it is not limited to making sure that somebody doesn't loose a job if they purchase 40 buses instead of 45. In fact, the 13 (c) Agreement at the top in the whereas clause, the application is for a capital grant to assist in the purchase of the assets of the Syracuse and Eastern Transit Corporation. It goes on to indicate what else it is for, but this grant was for the buying out of the Private Company, and I think it is stretching it to now come in and say, well, we are sorry, your rights under that expired when we got the money and purchased the Company, and now you don't have those rights anymore. We lost rights when they bought out Syracuse Eastern Transit. We lost rights as a result of this Federal money allowing the public body to purchase the private employer. We lost rights to strike and that certainly is the right

to bargain, there is nothing else that gives you the ability to reach an agreement that you want. The only substitution for that is binding interest arbitration, and that is the provision, the provision was made for it in that agreement as part of the allowing the Federal money to come into the State Authority and purchase out the private employers, take over the employees. Your rights have to be protected under the Federal statute. Now, Mr. Shulman's reference to the last sentence of paragraph 9, I think if you read that, Your Honor, it is clear that the project they are talking about is the buying out, the taking over by the public employer of the Private Transit, and I just don't see how anyone could say that once that is done we are going to loose all our rights which the Federal Law requires to be protected. That by this Federal Act, private employees and their Unions make sure they were protected in some manner because of the changes from private to public status, and that is what the Urban Mass Transportation Act is all about, and that is what the 13 (c) Agreement is all about, protecting those rights. I don't know how anyone can say when the buses come in, that is the end of your rights, which I think is what the employer is saying here. I also think, Your Honor, that it is clear, it is a Federal question,

the rights arise under that statute, and it is a question that should be governed by the Federal Law, because otherwise you are going to have an Act of Congress which has ramifications all over the United States being construed by 50 different State Courts whenever the question arises. It is a question that calls for the application of the Federal Law.

THE COURT: What about the impact of the Eleventh Amendment?

MR. LAVAUTE: It would protect, first of all, the enabling, setting up the Authority and also setting up the subsidiary Corporations which the Central New York Regional Transportation Authority is one, provides specifically one of the powers, one of the powers is to sue and be sued. So, the statutes specifically provides they can be sued. As far as the Eleventh Amendment, it would be only a saver, immunity would not relate to acts that are outside their Authority. We suggest that we take the position, it is our position that if they are depriving our rights under that agreement, under the Federal Law, they are acting outside their Authority, aside from the fact that they accepted--or the statute sets out the provisions that they can sue and be sued.

THE COURT: Yes, but what about if it is a

Governmental Function, it can be sued, but Congress can't interfere with the States function.

MR. LAVAUTE: It can if they are acting outside their Authority. If they are acting in violation of our rights under the Federal Law, they are not within their Authority and you would not be restraining--they would not be clocked with immunity for those purposes. Any public body could do anything it wanted and nobody would have a remedy. In addition to that, Your Honor, you will also notice that we have sued the numbers individually and so forth, to force them to exercise--to stop depriving us of our rights under the Appendant Claim, we would be able to sue the public body to enforce the contract.

MR. SHULMAN: Your Honor, may I briefly clear up somewhat maybe factual inaccuracies? Extreme provocation does give you the right to strike, I don't know--even to employees of Public Organizations within New York State. I have Mr. Warran Frank with me who is the Executive Director of the Transportation Authority, Warran Woodruff who is the General Manager of the Subsidies, and Vice-President, they would testify, Your Honor, that they have tried on several occasions to go back to the bargaining table, but we have been delayed almost 2½ months just wondering what

the Union would do with regard to settling. When Mr. Lavaute says that there has been an impasse for 3 months, I asked the Court whose fault is it, we have tried everything we could to move this along.

THE COURT: I don't see that that is material at all to this problem.

MR. SHULMAN: The reason, Your Honor, I would like--Mr. Lavaute was talking about the purchase of the Syracuse and Eastern, and how those employees are adversely effected. Your Honor, with the situation of the Syracuse and Eastern, the Central New York Regional required five drivers who were previously non-Union, and three buses, and certainly the act which situations of that small company to permit us to go into our Eastern suburbs shouldn't justify even the greatest stretch of the imagination, and an agreement to arbitrate every dispute which would arise at the end of contract negotiations falling through. My description of impasse procedures--actions as those stepstaken during the course of contract negotiations is not my idea, Your Honor, it is specifically the language of the Taylor Law which says in the Heading of Section 209, resolutions in the disputes within the course of collecting negotiations. So far, as Mr. King's conversations with Mr. Eishen (Phonetic

spelling), which bears on Mr. King's willingness to participate in the fact finding, again, I was not a party to that telephone conversation, I can only go by the letter of the fact finder, and that letter which is attached to my papers is Exhibit "G", is a letter from Mr. King to me.

THE COURT: I am less concerned with what was happening then, what is now pending? Is there dispute here that the Union is unwilling to go to fact finding?

MR. LAVAUTE: No.

THE COURT: Are there any issues of fact requiring a Hearing here, I don't see any?

MR. LAVAUTE: I don't know of any.

THE COURT: And Evidentiary Hearing?

MR. SHULMAN: One question of fact might be whether the Union and the Company have been participating within the Taylor Law procedures.

THE COURT: Well, beyond--what is before me.

MR. SHULMAN: Beyond what is before you, no.

THE COURT: This is the factual framework with which we are working that is presented to me?

MR. LAVAUTE: Yes, Your Honor.

THE COURT: No need for any Evidentiary Hearing?

MR. LAVAUTE: I don't believe so.

THE COURT: Is there anything further that you would, say that we were to hold this on Tuesday of next week, I had originally scheduled it and moved it up to today in view of Mr. Shulman's frantic plea, the fact finder was there ready to go, and we threw a monkey wrench into that, is there anything further you would add next Tuesday? In short, is this thing now ripe for decision?

MR. LAVAUTE: I don't think the fact finder is here ready to proceed.

THE COURT: As I understand Mr. Shulman, you say he is ready to proceed?

MR. SHULMAN: I have been in contact with PERB, and they will have a fact finder ready to proceed.

THE COURT: Today?

MR. SHULMAN: It depends on what the Court orders. I--

THE COURT: (Interrupting) Is he ready to proceed?

MR. SHULMAN: I hope so, I don't know.

THE COURT: He was willing and able to proceed this morning?

MR. SHULMAN: That is, it was scheduled this morning at ten o'clock.

MR. LAVAUTE: I don't want you to have the feeling that PERB wants to go to fact finding. Did you get a telegram from PERB this morning?

THE COURT: If I have I haven't seen it.

MR. LAVAUTE: They have sent a telegram to you of which I have a copy. It is among my papers, it was addressed to you, and it sets out their position which basically states--

MR. SHULMAN: (Interrupting) I haven't seen it.

THE COURT: I have it here somewhere, I haven't had an opportunity to read it.

MR. LAVAUTE: It states if you find there is an agreement to arbitrate this dispute that that would be proper under the Taylor Law, and they don't take the position as to whether fact finding procedures or not, they say we will do whatever the parties want us to do. Is that what they were saying?

THE COURT: I don't recall, it was summarized to me something to that effect.

MR. SHULMAN: Could I see that?

MR. LAVAUTE: If I can find it.

MR. SHULMAN: I spoke yesterday with Jerome Lefkowitz who is the Deputy Chairman of PERB, and I put in my affidavit, which is before the Court, his statements that a fact finder would definitely be made available so that this matter could proceed quickly. Much depended on how quickly today went. I haven't seen any telegram--

THE COURT: (Interrupting) There is one delivered to me here. Alright, have you completed your arguments?

MR. LAVAUTE: The only other thing I have to say, Mr. Shulman keeps on indicating we have delayed this--

THE COURT: (Interrupting) I don't think that is material.

MR. SHULMAN: Could I be permitted to glance at that telegram?

THE COURT: Yes, sure.

MR. SHULMAN: Well, I don't construe this telegram in the same way Mr. Lavaute did.

THE COURT: I can read it and construe it, but if you want to make an argument about it, go ahead.

MR. SHULMAN: I feel it is repetitious of Mr. Bare's (Phonetic spelling) previous stand, that where in PERB, takes no position and leaves it up to this Court or whatever to determine the issue of whether this is such an agreement as would fit within the Provisions of 2092 including the allegations of waiver which have been raised by the Defendants here appearing. In addition, I have been assured that in the event of a positive determination in our favor, that a PERB fact finder will be expeditiously if not immediately made available.

THE COURT: Do you rest?

MR. SHULMAN: Yes.

MR. LAVAUTE: Yes, Your Honor.

(The conclusion of this proceeding was furnished to Mr. Lavaute on February 10, 1977).

Court Reporter's Certification.

R E P O R T E R ' S C E R T I F I C A T I O N

I, Armand J. Roberts, Official Court Reporter for the United States District Court in and for the Northern District of New York, do certify this to be a true and accurate transcription of the stenographic notes as made by me during the aforesaid proceedings.

Armand J. Roberts
Official Court Reporter
United States District Court

ALBANY, NEW YORK
March 10, 1977

MOTIONS FOR SUMMARY JUDGMENT

NOTICE OF MOTION TO DISMISS COMPLAINT OR FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

77-CV-45

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

NOTICE OF NOTION TO DISMISS COMPLAINT OR FOR SUMMARY JUDGMENT

NOTICE OF MOTION TO DISMISS COMPLAINT OR FOR SUMMARY JUDGMENT

The Defendants, CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, CNY CENTRO, INC., CENTRO OF CAYUGA, INC., CENTRO OF OSWEGO, INC., and ROYAL L. O'DAY, JOHN W. STONE, JR., WARREN H. FRANK, GREGORY MERRIAM, DR. KENNETH G. BARTLETT, HAROLD W. ORCHARD, HAROLD L. FISHER, ROBERT M. GIL MARTIN and LESLIE J. PARNELL, all individually and as members and, where applicable, as officers and employees of the Public Benefit corporate Defendants appearing herein (all hereinafter collectively referred to as Moving Defendants), move the Court to dismiss the action under Rule 12(b)(6) of the Federal Rules of Civil Procedure, because the Complaint fails to state a claim against Moving Defendants on which relief can be granted; or in the alternative, to grant Summary Judgment to Moving Defendants under Rule 56 of the Federal Rules of Civil Procedure on the ground that Moving Defendants are entitled to Judgment as a matter of law, as more particularly appears from the Affidavit of Barry M. Shulman, sworn to the 10th day of February, 1977 and annexed hereto as Exhibit "A".

This motion is returnable on February 21, 1977 at 10:00 A.M. at the United States Courthouse, Utica, New York.

The supporting papers are the Affidavit of Barry M. Shulman sworn to the 10th day of February, 1977, annexed; the Summons and Complaint; Order to Show Cause, Temporary Restraining Order and supporting Affidavits thereto; Affidavit in Opposition to Order to Show Cause and Temporary Restraining Order of Barry M. Shulman sworn to the 8th day of February, 1977; together with accompanying exhibits and the Supplemental Affidavit in Opposition to Order to Show Cause and Temporary Restraining Order of Barry M. Shulman, sworn to the 9th day of February, 1977; all of which, except for the Affidavit first mentioned above, have been previously filed with the Clerk of this Court.

The relief sought is an Order granting dismissal of the Complaint herein or in the alternative, Summary Judgment, denying Plaintiff the relief sought in it's Complaint, together with such other and further relief, including the costs of this motion, as may appear reasonable and proper.

DATED: FEBRUARY 10, 1977

Yours, etc.,

AXENFELD, WEBB, MARSHALL, BERSANI & SCOLARO

BY: _____

Attorneys for Moving Defendants
500 Building**500 S. Salina Street
Syracuse, New York 13202
Telephone:(315) 422-9201

TO:

BLITMAN & KING
Attorneys for Plaintiff
351 South Warren Street
Syracuse, New York 13202

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
... MARTIN L. BARR, ESQ.
50 Wolf Road
Albany, New York 12226

AFFIDAVIT OF BARRY M. SHULMAN IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

77-CV-45

DIVISION 580, AMALGAMATED TRANSIT
UNION, AFL-CIO
617 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J. PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

AFFIDAVIT

EXHIBIT "A"

AFFIDAVIT OF BARRY M. SHULMAN IN SUPPORT OF MOTION.

*****
STATE OF NEW YORK * s.s.
COUNTY OF ONONDAGA *
*****

BARRY M. SHULMAN, being duly sworn, deposes and says:

FIRST: He is an attorney duly licensed to practice law in the United States District Court, Northern District of New York and is counsel to the CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, it's subisidiary corporations, members, officers, employees and the Directors of it's subsidiary corporations, (collectively referred to as "Moving Defendants"). He makes this Affidavit in support of a motion by Moving Defendants for dismissal of the Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, for Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure.

SECOND: Previously filed with this Court are your deponent's Affidavit and Supplemental Affidavit, together with exhibits lettered "A" through "O", opposing on behalf of Moving Defendants the relief sought by Plaintiff in it's application by Order to Show Cause for a Temporary Restraining Order, and injunctive relief staying fact-finding between the parties under applicable provisions of the Taylor Law. Said Affidavit and Supplemental Affidavit, for the sake of brevity, are incorporated by reference as though more fully set forth in this Affidavit.

THIRD: On February 9, 1977, at 11:00 A.M. at the United States Courthouse in Syracuse, New York, a hearing was conducted by Hon. Lloyd F. MacMahon, United States District Judge. At this hearing your deponent, on behalf of Moving Defendants, and Plaintiff's counsel were both present.

FOURTH: Both sides argued their relative positions at length before Judge MacMahon, and a transcript of the proceedings was made by a court stenographer.

FIFTH: After careful reading of the papers and careful consideration of the points raised during oral argument, Judge MacMahon rendered a decision from the bench, vacating the stay of fact-finding so that it could proceed forthwith, upon the ground that the Union had voluntarily and intentionally chosen a course of action by having participated in Taylor Law impasse procedures. Judge MacMahon further observed, as the transcript will indicate, that in his opinion, the Complaint herein should be dismissed, although Plaintiff's counsel requested that Judge MacMahon not so rule during the hearing.

SIXTH: After the hearing, your deponent telephoned the New York State Public Employment Relations Board (PERB), the fact-finder appointed by PERB and counsel to Plaintiff. All parties are, to your deponent's knowledge and belief, working toward a date for fact-finding, which at the present is tentatively scheduled for February 16, 1977, pending the availability of the fact-finder and counsel for Plaintiff.

AFFIDAVIT OF BARRY M. SHULMAN IN SUPPORT OF MOTION.

SEVENTH: Because of the decision of Judge MacMahon, which is in the process of being distributed by the Court to all attorneys, the relief requested by Plaintiff in it's Complaint has been determined in favor of Moving Defendants. Plaintiff's contention that the 13(c) Agreement annexed to Plaintiff's Complaint, mandates arbitration is now moot and not justiciable.

EIGHTH: The relief sought by Plaintiff in it's Complaint in sub-paragraphs "59 (a-d)", is for Declaratory Judgment that the 13(c) Agreement there attached be enforced. This relief has been determined by the Court in favor of Moving Defendants and against Plaintiff.

NINTH: Sub-paragraphs "59 (e-g)" of Plaintiff's Complaint requests Judgment enjoining PERB from participating in or supervising fact-finding. The Court has likewise determined these issues in favor of Moving Defendants and against the position advanced by Plaintiff.

TENTH: In view of the determination of this Court that the Union has waived it's rights, such as they might have been, to 13(c) protection by having participated in Taylor Law impasse procedures, any determination by this Court on the Declaratory Judgment relief sought by Plaintiff is non-justiciable and moot and Plaintiff's Complaint should be dismissed.

ELEVENTH: All parties hereto are now in concert in submitting to, and in the case of PERB, in supervising fact-finding in accordance with the determination of Judge MacMahon.

TWELFTH: The reason that this application ~~is being made~~ before receipt of Judge MacMahon's Decision, is that your deponent is informed that the last motion term in Utica, New York, where Judge MacMahon will preside, is on February 21, 1977. Notice requirements of the Federal Rules require service of these motion papers on Plaintiff's counsel ten (10) days prior to such motion date.

WHEREFORE, your deponent respectfully requests that this Court grant the relief sought herein by Moving Defendants, including the costs of this motion, together with such other and further relief as to this Court seems just and proper.

BARRY M. SHULMAN

Subscribed and sworn to before me

this 10th day of February, 1977.

NOTARY PUBLIC

DIANE LAWLOR
Notary Public in the State of New York
Qualified in Onondaga Co. No. 4630307
My Commission Expires March 30, 1978

NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO 617 Wolf Street Syracuse, New York 13208 Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York, et al., Defendants.	Civil Action No. 77-CV-45

TO: AXENFELD, WEBB, MARSHALL,
BERSANI & SCOLARO
Attorneys for Authority Defendants
500 Building
500 South Salina Street
Syracuse, New York 13202

MARTIN L. BARR, ESQ.
Attorney for PERB Defendants
Public Employment Relations Board
50 Wolf Road
Albany, New York 12226

PLEASE TAKE NOTICE that upon the annexed Affidavit of Bernard T. King, and upon the Authority Defendants' motion papers for summary judgment, returnable February 21, 1977, and upon all the pleadings and proceedings heretofore had herein, the Plaintiff will move this Court at a Stated Term for the hearing of the United States Court House, Utica, New York, on the 21st day of February, 1977, at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting a summary judgment in favor of the Plaintiff and against the Defendants upon the ground that there is no genuine issue of any material fact and that Plaintiff

is entitled to judgment as a matter of law.

BLITMAN AND KING

By: Bernard T. King
Bernard T. King, of Counsel

Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

Telephone: (315) 422-7111

AFFIDAVIT OF BERNARD T. KING IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO DEFENDANTS' MOTION.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO 617 Wolf Street Syracuse, New York 13208 Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York, et al., Defendants.	Civil Action No. 77-CV-45

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

BERNARD T. KING, being duly sworn, deposes and says:

1. I am a partner in the law firm of Blitman and King, attorneys for Plaintiff Division 580, Amalgamated Transit Union, AFL-CIO [hereinafter the "Union"].

2. I make this affidavit in support of Plaintiff's cross-motion for summary judgment pursuant to Fed.R.Civ.Proc., Rule 56. Additionally, I make this affidavit in opposition to the summary judgment motion and 12(b)(6) motion of Defendants, Central New York Regional Transportation Authority, CNY Centro, Inc., Centro of Oswego, Inc., Centro of Cayuga, Inc., Royal L. O'Day, John W. Stone, Jr., Warren W. Frank, J. Gregory Merriam, Dr. Kenneth G. Bartlett, Harold L. Fisher, Robert M. Gilmartin, Harold W. Orchard and Leslie J. Parnell. Hereinafter said Defendants are collectively referred to as the "Authority Defendants."

3. In this action, Plaintiff seeks declaratory and injunctive relief, including:

a. A declaratory judgment that the "§13(c)" Agreement

between Plaintiff and the Authority Defendants is a valid and enforceable agreement for binding arbitration over the instant dispute.

b. Judgment directing the Authority Defendants to arbitrate the instant dispute pursuant to the §13(c) Agreement; and

c. Judgment enjoining the commencement or conducting of certain statutory impasse resolution procedures in N. Y. Civil Service Law §209 and enjoining the commencement or conducting of a factfinding hearing.

4. On February 9, 1977, a hearing was held on Plaintiff's motion for preliminary relief.

5. After said hearing, the Court ruled that, inter alia, the §13(c) Agreement was a valid and enforceable arbitration agreement and that the said arbitration agreement covered the instant dispute.

6. The Court, however, refused to grant the Plaintiff the relief it sought, apparently on the ground that the Union had waived its right to arbitrate the dispute by employing mediation services in an effort to settle the dispute short of arbitration.

7. Thereafter, the Authority Defendants moved for summary judgment and Plaintiff cross-moved, also for summary judgment.

8. It is submitted that summary judgment must be granted herein in favor of Plaintiff and against the Defendants since: whether a waiver could have occurred is a matter for the arbitrator under the broad arbitration clause herein; and because no waiver occurred herein as a matter of law or fact.

MORE PARTICULARLY AS TO
ARBITRABILITY OF WAIVER ISSUE

9. Equitable defenses as to arbitrability are matters to be decided by arbitrators and not by the courts.

10. Whether the alleged acts of the Union constituted a waiver of the parties' agreement to arbitrate is an equitable defense.

11. Thus, that issue must be submitted to arbitration.

MORE PARTICULARLY AS TO
ABSENCE OF WAIVER

12. In any event, the facts herein do not establish, as a matter of law, that any waiver of arbitration rights occurred.

13. First, it is observed that the Defendants have failed to establish that they have been, in any way, prejudiced by any of the acts of the Plaintiff herein.

14. Secondly, Plaintiff's participation in mediation was not an abandonment of arbitration; rather, it was an effort to amicably resolve the dispute.

15. Finally, it is observed that the Plaintiff, at all times, moved expeditiously to resolve this dispute.

16. When the efforts of the mediator to achieve a voluntary resolution of the dispute failed, the Union immediately demanded arbitration.

17. As early as December 13, 1976, deponent, as attorney for the Plaintiff advised the Defendants that the Union sought arbitration of this dispute. Annexed hereto as Exhibit "A" is a copy of deponent's letter making said demand

18. Defendants, however, refused and continue to refuse to honor that request.

AFFIDAVIT OF BERNARD T. KING IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO DEFENDANTS' MOTION.

19. Thus, it is clear that Plaintiff has never waived their right to arbitrate the instant dispute.

WHEREFORE, it is respectfully prayed that an order issue herein denying the Authority Defendants' motion herein and that judgment issue in favor of Plaintiff and against Defendants.

Bernard T. King
BERNARD T. KING

Sworn to before me this 16th day of February, 1977.

Jules L. Smith
Notary Public

JULES L. SMITH
Notary Public in the State of New York
Qualified in Onondaga Co. No. 9072000
My Commission Expires March 30, 1978

Letter from Bernard T. King to Barry M. Shulman, Esq., dated 12-13-76
attached to King Affidavit.

BLITMAN AND KING
Attorneys and Counselors at Law
[illegible] CHAMBER BUILDING
[illegible] SOUTH WARREN STREET
SYRACUSE, N. Y. 13202

BARTHAN M. BLITMAN
BERNARD T. KING
WILLIAM A. PIZZO
CHARLES E. BLITMAN

JULES L. BIANCHI
GREGG R. LAVANTE

J. HERMAN GRANNADE
1908 - 1950

AREA CODE 315
PHONE 422-7111

December 13, 1976

Barry M. Shulman, Esq.
Axenfeld, Webb, Marshall,
Bersani & Scolaro
500 Building
500 South Salina Street
Syracuse, New York 13202

Re: Division 580, Amalgamated Transit
Union -and- CNY Centro, Inc.

Dear Mr. Shulman:

I have your letter dated December 1, 1976, regarding the collective bargaining dispute between Division 580 and Centro.

The Capital Grant Agreement of March, 1975, to which the Union and Centro are party, provides for arbitration of "any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements . . . ." Division 580 intends to enforce that agreement between the parties, and to arbitrate the current contract dispute. In view of that intention, the Union will not proceed to factfinding.

Very truly yours,

BLITMAN AND KING

Bernard T. King

Bernard T. King

BTK/fbm

cc: George B. Wright, President
Amalgamated Transit Union, Division 580

Joseph P. Welch, Business Agent
Amalgamated Transit Union, Division 580

BEST COPY AVAILABLE

Certificate of Service
attached to King Affidavit.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO 617 Wolf Street Syracuse, New York 13208 Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York, et al., Defendants.	Civil Action No. 77-CV-45

CERTIFICATE OF SERVICE

I, JULES L. SMITH, attorney for Plaintiff, Division 580, Amalgamated Transit Union, AFL-CIO, hereby certify that on the 16th day of February, 1977, I served the attached Notice of Cross-Motion, Affidavit, and Exhibit upon the parties hereto by serving their attorneys, as listed below, by depositing copies in the United States mails, postpaid, addressed to them at their last known addresses.

Axenfeld, Webb, Marshall
Bersani & Scolaro
Attorneys for Authority Defendants
500 Building
500 South Salina Street
Syracuse, New York 13202

Martin L. Barr, Esq.
Attorney for PERB Defendants
Public Employment Relations Board
50 Wolf Road
Albany, New York 12226

BLITMAN AND KING

By: Jules L. Smith
Jules L. Smith, Esq.

Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202
Telephone: (315) 422-7111

DATED: February 16, 1977

SUPPLEMENTARY AFFIDAVIT OF BERNARD T. KING.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO 617 Wolf Street Syracuse, New York 13208, Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York, et al., Defendants.	Civil Action No. 77-CV-45

SUPPLEMENTARY AFFIDAVIT ON BEHALF OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:
CITY OF SYRACUSE)

BERNARD T. KING, being duly sworn, deposes and says:

1. He is a partner in the law firm of Blitman and King, attorneys for Plaintiff Division 580, Amalgamated Transit Union, AFL-CIO (hereinafter the "Union").

2. The purpose of this Supplementary Affidavit is to supply the Court with certain facts clarifying some misunderstandings that may have resulted from the affidavit of Mr. Shulman, submitted in answer to Plaintiff's Motion for a Preliminary Injunction. Your deponent was not personally present at the hearing on the Preliminary Injunction and had not seen Mr. Shulman's Affidavit until after the return date at which the Court rendered its Decision.

3. The information your deponent wishes to offer are matters, some of which are within his own personal knowledge and relate to any alleged question of waiver, based on belatedly informing Defendants of Plaintiff's intention to arbitrate.

4. Subsequent to the mediation efforts of the parties,

SUPPLEMENTARY AFFIDAVIT OF BERNARD T. KING.

Defendant Centro's last contract offer was reported back to the Union membership on November 10, 1976, at which time the membership rejected that offer and directed the Union to proceed to arbitration under the Section 13(c) agreement. Representatives of Plaintiff's Union shortly thereafter contacted your deponent and a letter dated November 11, 1976 signed by George B. Wright, President of Local 580 was delivered to Mr. Warren W. Frank, President of Defendant Centro on November 17, 1976, informing him of the Union's intention to arbitrate, and notifying them that the Union had appointed Joseph P. Welch as its arbitrator (a copy of that letter is attached hereto as Exhibit "A").

5. On November 22, 1976, your deponent also wrote to Defendant Centro's President Frank requesting arbitration (a copy of that letter is attached hereto as Exhibit "B").

6. By letter dated December 1, 1976, Defendant Centro's attorney, Barry M. Shulman, wrote to your deponent contesting the Union's right to arbitration and insisting on using the PERB procedures (a copy of that letter is attached hereto as Exhibit "C").

7. By letter dated December 13, 1976, your deponent wrote to Mr. Shulman, clarifying the Union's position concerning its right to arbitration and informing him that the Union had no intention of proceeding to Fact Finding (a copy of that letter is attached hereto as Exhibit "D").

8. By telephonic communication, your deponent had, prior to December 13, 1976 and thereafter, informed the officials of PERB that there was an agreement to arbitrate which superseded the PERB dispute-settlement procedures.

9. Neither your deponent nor the Union ever consented to the employment of a Fact Finder or to the Fact-Finding procedures.

10. Because a Fact-Finding proceeding is normally conducted subsequent to mediation in the absence of an agreement to arbitrate, a Fact Finder had been appointed by PERB without the consent

of Plaintiff Union. The initial hearing date was postponed, based upon your deponent's notification to PERB that there was an arbitration provision which Plaintiff Union intended to enforce.

11. By letter of December 15, 1976, your deponent informed PERB in writing of the existence of the agreement and asked for a ruling from Mr. Martin L. Barr, Counsel to PERB, relative to the superseding of the PERB procedures by the arbitration agreement. A copy of the Section 13(c) Agreement was sent to Mr. Barr, contrary to the impressions otherwise created by Mr. Shulman's affidavit (a copy of that letter is attached hereto as Exhibit "E").

12. By letter dated December 22, 1976 and received by your deponent on December 24, 1976, Mr. Barr answered your deponent's letter advising Plaintiff Union that the §13(c) Agreement could properly be construed as an agreement superseding the PERB procedures, but indicating that the opinion was "advisory" (a copy of Mr. Barr's letter is attached hereto as Exhibit "F").

13. Mr. Shulman had written to your deponent by letter dated December 16, 1976, expressing various sentiments but also acknowledging "your client's original threat to enjoin Fact Finding" (a copy of that letter is attached hereto as Exhibit "G").

14. Your deponent responded to Mr. Shulman's letter of December 16th with his letter of December 21, 1976, again reiterating the Union's position with respect to arbitration (a copy of that letter is attached hereto as Exhibit "H").

15. The holiday period suspended some activities with respect to this controversy subsequent to the receipt of Mr. Barr's letter of December 24, 1976. Thereafter, however, your deponent endeavored to prevail upon PERB to cancel any Fact Finding in lieu of arbitration. The substance of PERB's position to your deponent was that all parties would be better served by getting a judicial determination of the arbitration right, and merely adjourning the Fact Finding pending that determination.

SUPPLEMENTARY AFFIDAVIT OF BERNARD T. KING.

16. It was your deponent's understanding that the Fact Finding hearing set for January 24, 1977 would be adjourned to afford us an opportunity to get a Court determination of this question. Fact Finder Eischen's letter of January 21, 1976 (presumably "1977") refers to an "unanticipated scheduling conflict." In fact, Mr. Eischen had been advised that one of the bases for our request for adjournment was in order to get this Court's ruling on Plaintiff Union's right to arbitration (a copy of Mr. Eischen's letter is attached hereto as Exhibit "I").

17. Any delay in bringing this matter to this Court's jurisdiction after Plaintiff Union's final realization that only a Court Decision could resolve the matter was occasioned solely by the time necessary to institute these legal proceedings.

18. In the final analysis, any delay which has been caused in these proceedings has been occasioned, not by any fault of the Plaintiff Union, but by reason of the refusal of Defendant Centro to abide by its agreement to arbitrate the pending labor dispute.

WHEREFORE, it is respectfully prayed that an Order issue herein denying the Authority Defendants' Motion herein, and that judgment issue in favor of Plaintiff and against Defendants.

Bernard T. King
BERNARD T. KING

Sworn to before me this 21st
day of February, 1977.

Notary Public

JAMES R. LaVAUTE
Notary Public in the State of New York
Qualified in [illegible] No. 34-4505121
My Commission Expires March 30, 1977

Exhibit A – Letter from George B. Wright to Warren Frank, dated 11-11-76 attached to King Supplementary Affidavit.

EXHIBIT #4

Phone: 422-9589

DIVISION 580
AMALGAMATED TRANSIT UNION
617 WOLF STREET
SYRACUSE, NEW YORK 13208

Affiliated with the
GREATER SYRACUSE LABOR COUNCIL
and AFL-CIO

November 11, 1976

Mr. Warren Frank,
President
CNY CENTRO Inc.ET.AL.
508 Midtown Plaza
East Washington Street
Syracuse, New York 13210

NOTE:
COPY LEFT WITH WARREN FRANK 11-17-76 - 1:22 PM
JRW

Dear Mr. Frank,

Please be advised that at the Regular Monthly Meeting of the Membership of the Amalgamated Transit Union, Local Division 580 on November 10, 1976 the Special Order of Business was contract negotiations and matters pertaining to same.

Although the Negotiating Committee of Local Division 580 rejected the Company offer when it was proposed to them on November 5, 1976, the Executive Board unaminously agreed that the Membership should be made aware of the terms of the Company's offer; and be given the opportunity to voice their opinions by the process of the secret ballot to exercise their individual right to decide whether or not to bring the offer down for a referendum vote.

The Membership voted not to bring the Company offer down for a referendum vote, therefore rejecting the Company offer for further consideration.

The Membership via a Motion then voted to direct the Negotiating Committee to inform the Company (ie: Warren H. Frank, President) that due to the fact that collective bargaining in regard to Contract Negotiations has not resulted in the making of an Agreement in regards to wages, working conditions, health & welfare benefits, sick leave, pension and retirement provisions, terms to be included, adjustment of grievances, etc., we (Amalgamated Transit Union, Local Division 580) therefore on this date NOVEMBER 17, 1976 JRW by this written request inform CNY CENTRO Inc.ET.AL. that according to the provisions of Section 13 (C) of the Urban Mass Transportation Act of 1964, As Amended intend to submit to binding Arbitration the issues relative to Contract Negotiations 1976.

Please be advised that the Amalgamated Transit Union, Local Division 580 hereby appoints Joseph P. Welch as it's Arbitrator.

With kindest regards, I am

Sincerely yours,
George B. Wright
George B. Wright,
President

Exhibit B — Letter from Bernard T. King to Warren Frank, dated 11-22-76 attached to King Supplementary Affidavit.

November 22, 1976

Mr. Warren Frank, President
CNY Centro, Inc.
508 Midtown Plaza
East Washington Plaza
Syracuse, New York 13210

Re: Collective Bargaining Negotiations
Division 580, Amalgamated Transit Union

Dear Mr. Frank:

This office represents Amalgamated Transit Union, Division 580, AFL-CIO, with respect to the present negotiations for a collective bargaining agreement with CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.

George B. Wright, President of Division 580, wrote to you on November 11, 1976 and stated that the Union was taking the present contract dispute to binding arbitration in accordance with the provisions of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, and Section 9 of the capital grant agreement of March 11, 1975.

Mr. Wright informed you in his November 11 letter that the Union was designating Joseph P. Welch as its arbitrator in the interest arbitration. Pursuant to Section 9 of the above-mentioned grant agreement, the Employer must appoint its arbitrator within ten (10) days after notice of submission to arbitration. Please inform the undersigned of the Employer's designated arbitrator so that both the Union and the Employer arbitrators may select a third neutral arbitrator.

If you have any questions as to this, please contact me.

Very truly yours,

BLITMAN AND KING

Bernard T. King

BTK/fbm

cc: - continued -

Exhibit B — Letter from Bernard T. King to Warren Frank, dated 11-22-76 attached to King Supplementary Affidavit.

Mr. Warren Frank, President
CNY Centro, Inc.
November 22, 1976
Page 2

cc: George B. Wright, President
Amalgamated Transit Union, Division 580

Joseph P. Welch, Business Agent
Amalgamated Transit Union, Division 580

Exhibit C — Letter from Barry M. Shulman, dated 12-1-76
attached to King Supplementary Affidavit.

Axenfeld, Webb, Marshall, Bersani & Scolaro

ATTORNEYS AT LAW
500 BUILDING
500 SOUTH SALINA STREET
SYRACUSE, NEW YORK 13202

AREA CODE 315
TELEPHONE 422-9201

MAURICE S. AXENFELD
CHARLES S. WEBB III
GARY M. AXENFELD
DONALD A. MARSHALL
EUGENE F. BERSANI
RICHARD S. SCOLARO
BARRY M. SHULMAN
JOSEPH C. WATT, JR.
MARC I. GOLD
PAUL E. SCANLAN
WILLIAM B. MAGNARELLI
EDWARD W. ZAWACKI
THOMAS S. FINEGAN
ROGER B. WILLIAMS

COUNSEL
PAUL E. GEORGE

December 1, 1976

Blitman and King
Law Offices
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

ATTN: BERNARD T. KING, ESQ.

RE: COLLECTIVE BARGAINING NEGOTIATIONS ** DIVISION 580, AMALGAMATED TRANSIT UNION

Dear Mr. King:

I am forwarding this letter to you at the request of Warren Frank, in response to your letter to him of November 22, 1976.

Section 9 of the "Capital Grant Agreement of March 11, 1975", to which you refer, is in fact Section 9 of the 13(c) Agreement, itself. The purpose of the 13(c) Agreement is to protect labor in the event of an adverse impact as the result of a federally subsidized specific Project, be it by virtue of operating or capital grant subsidies.

The last paragraph of Section 9 specifically, and by its terms, does not enlarge the right of either party to utilize, upon the expiration of any collective bargaining agreement, economic measures which are inconsistent or in conflict with the collective bargaining agreement or applicable law. In the contract between the Central New York Regional Transportation Authority and the Amalgamated Transit Union, Division 580, arbitration is limited to grievance arbitration.

PERB, which has sole jurisdiction under the laws of the State of New York in attempting to resolve collective bargaining disputes which arise at the expiration of a contract term, specifically mandates the continuation of the basic contract during mediation, fact-finding and thereafter as set forth in the Civil Service Law. Mandatory arbitration for members of your client's Union, is not provided for in PERB's enabling and authorizing legislation.

Exhibit C — Letter from Barry M. Shulman, dated 12-1-76 attached to King Supplementary Affidavit.

Azenfeld, Webb, Marsball, Bersani & Scolaro

PAGE II*** DECEMBER 1, 1976

The Central New York Regional Transportation Authority, as has been communicated by Mr. Frank to the officers of your client, considers the 13(c) Agreement as inapplicable to the situation at hand.

The Authority has requested that fact-finders be appointed by PERB. We look forward to resolution of any present contract disputes under the appropriate statutes, rules and regulations of PERB.

Very truly yours,

Barry M. Shulman

BMS/dl

cc: Warren H. Frank

NOV 2 1976

Exhibit D – Letter from Bernard T. King to Barry M. Shulman, dated 12-13-76 attached to King Supplementary Affidavit.

December 13, 1976

Barry M. Shulman, Esq.
Axenfeld, Webb, Marshall,
Persani & Scolaro
500 Building
500 South Salina Street
Syracuse, New York 13202

Re: Division 580, Amalgamated Transit
Union -and- CNY Centro, Inc.

Dear Mr. Shulman:

I have your letter dated December 1, 1976, regarding the collective bargaining dispute between Division 580 and Centro.

The Capital Grant Agreement of March, 1975, to which the Union and Centro are party, provides for arbitration of "any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements . . . ." Division 580 intends to enforce that agreement between the parties, and to arbitrate the current contract dispute. In view of that intention, the Union will not proceed to factfinding.

Very truly yours,

BLITMAN AND KING

Bernard T. King

BTK/fbm

cc: George B. Wright, President
Amalgamated Transit Union, Division 580

Joseph P. Welch, Business Agent
Amalgamated Transit Union, Division 580

Exhibit E – Letter from Bernard T. King, dated 12-15-76
attached to King Supplementary Affidavit.

December 15, 1976

Martin L. Barr, Counsel
New York State
Public Employment Relations Board
50 Wolf Road
Albany, New York 12205

Re: CNY Centro, Inc. -and- Amalgamated
Transit Union, Division 580
Collective Bargaining Negotiations

Dear Mr. Barr:

This office represents Amalgamated Transit Union, Division 580, AFL-CIO, with respect to present negotiations for a collective agreement with CNY Centro, Inc. I am writing to request an opinion from you as to the applicability of the Taylor Law impasse resolution procedures to the dispute between the above parties.

CNY Centro, Inc. is a public benefit subsidiary corporation of the Central New York Regional Transportation Authority of Syracuse, New York. Centro operates the transit system in Central New York for the Regional Transportation Authority. The Regional Transportation Authority receives federal funds, for the transit operation, under the Urban Mass Transportation Act of 1964, as amended. As a condition of assistance under that Act, the Central New York Regional Transportation Authority, CNY Centro, Inc. and Local Division 580, Amalgamated Transit Union, AFL-CIO, entered into an agreement dated March 11, 1975. The agreement was executed pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964. Under Section 9 of the agreement, the parties provided for binding arbitration of "any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements . . . ." The same agreement sets forth the procedure to be utilized in appointment of arbitrators by the parties and subsequent selection of an impartial, neutral arbitrator. A copy of the agreement is attached to this letter.

Exhibit E — Letter from Bernard T. King, dated 12-15-76 attached to King Supplementary Affidavit.

Martin L. Barr, Counsel
December 15, 1976
Page 2

The most recent collective bargaining agreement between Centro and Division 580 expired by its terms on November 1, 1976. Centro and Division 580 have been unable to reach agreement on the terms of a successor collective bargaining agreement. Pursuant to the procedures outlined in Section 9 of the Section 13(c) agreement, Division 580 has notified Centro of its appointed arbitrator. Centro has not appointed its arbitrator, even though the agreement requires it to make such an appointment within 10 days of notice that the Union was submitting the dispute to arbitration. Centro has informed the Union that it is refusing to proceed to arbitration, and has stated its opinion that the dispute resolution procedures of the Public Employees Fair Employment Act must be utilized with respect to this dispute.

We note that Section 209.2 of the Public Employees' Fair Employment Act provides that,

> "Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the Board to render assistance . . . ."

In the view of Division 580, the Section 13(c) agreement providing for binding arbitration of disputes over the terms and conditions of a collective bargaining agreement, i.e., interest arbitration, would supersede the statutory procedures in this instance. We ask your opinion as to whether the agreement of the parties for resolving the present dispute takes precedence over the dispute resolution procedures set forth in the Taylor Act.

Very truly yours,

BLITMAN AND KING

Bernard T. King

BTK/fbm
cc: - continued -

Exhibit E — Letter from Bernard T. King, dated 12-15-76 attached to King Supplementary Affidavit.

Martin L. Barr, Counsel
December 15, 1976
Page 3

cc: George B. Wright, President
Amalgamated Transit Union, Division 580

Joseph P. Welch, Business Agent
Amalgamated Transit Union, Division 580

Exhibit F – Letter from Martin L. Barr, dated 12-22-76 attached to King Supplementary Affidavit.

BOARD MEMBERS
ROBERT D. HELSBY
CHAIRMAN
JOSEPH R. CROWLEY
[redacted]

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

COUNSEL
MARTIN L. BARR

December 22, 1976

Bernard T. King, Esq.
Blitman and King
500 Chamber Building
351 South Warren Street
Syracuse, N.Y. 13202

RE: CNY Centro, Inc. and Amalgamated Transit Union, Division 580

Dear Mr. King:

This is to reply to your letter of December 15 in which you ask whethercertain provisions of the agreement entered into between Central New York Regional Transportation Authority, CNY Centro, Inc. and Local Division 580, Amalgamated Transit Union, AFL-CIO, pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964 could constitute an agreement authorized by Section 209.2 of the Civil Service Law.

In particular you make reference to Section 9 of said agreement which provides that in the case of any labor dispute where collective bargaining does not result in agreement, the same may be submitted to final and binding arbitration. The term "labor dispute" is defined as including "any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements . . .".

DEC 24 1976

Exhibit F — Letter from Martin L. Barr, dated 12-22-76 attached to King Supplementary Affidavit.

Civil Service Law §209.2 provides in part:

> "Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the Board to render assistance . . .".

It is my opinion that a 13(c) agreement could properly be construed as an agreement authorized by the provisions of Civil Service Law §209.2. That statute specifically authorizes a public employer and an employee organization to agree to submit bargaining issues to arbitration. Such an agreement between a public employer and an employee organization will establish alternative impasse procedures for the parties to the agreement.

It should be understood that the Taylor Law is applicable to the negotiations disputes between CNY Centro, Inc. and Division 580, Amalgamated Transit Union, since CNY Centro, Inc. is a public employer and the employees in question are public employees, within the meaning of the Taylor Law. It should also be understood that I do not purport to interpret the 13(c) agreement to the extent of defining the parties' obligations thereunder. It is my conclusion that, if the parties have agreed pursuant to the provisions of the 13(c) agreement to submit their negotiations dispute to final and binding arbitration, such agreement is consistent with the Taylor Law and specifically authorized by Civil Service Law §209.2.

This opinion is advisory only, since binding determinations are restricted by statute to the Board in actual cases presented to it.

Very truly yours,

Martin L. Barr

Martin L. Barr
Counsel

MLB:ap

Exhibit G — Letter from Barry M. Shulman to Blitman and King, dated 12-16-76 attached to King Supplementary Affidavit.

Axenfeld, Webb, Marshall, Bersani & Scolaro
ATTORNEYS AT LAW
500 BUILDING
500 SOUTH SALINA STREET
SYRACUSE, NEW YORK 13202
AREA CODE 315
TELEPHONE 422-9201

MAURICE S. AXENFELD
CHARLES S. WEBB III
GARY M. AXENFELD
DONALD A. MARSHALL
EUGENE F. BERSANI
RICHARD S. SCOLARO
BARRY M. SHULMAN
JOSEPH C. WATT, JR.
MARC I. GOLD
PAUL E. SCANLAN
WILLIAM B. MAGNARELLI
EDWARD W. ZAWACKI
THOMAS S. FINEGAN
ROGER B. WILLIAMS

COUNSEL
PAUL E. GEORGE

December 16, 1976

Blitman & King
Law Offices
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

ATTN: BERNARD T. KING, ESQ.

Dear Mr. King:

Thank you for your letter of December 13, 1976.

I regret your decision not to proceed to fact-finding. I hope that you can find yourself in a position to review this decision with a view toward changing it. I do not know what possible harm proceeding to fact-finding can cause you or your client, and I can see substantial benefits to both parties.

Both your client and ours have already proceeded a great distance under the Taylor Law through PERB, the New York State Agency having exclusive jurisdiction over our labor negotiations. Both mediation, which has already been completed, and fact-finding are Taylor Law procedures which are to be utilized specifically during the course of collective bargaining. Their invocation does not result from a determination that collective bargaining has failed.

We consider your decision not to proceed to fact-finding, if it is not altered, as a violation of the Taylor Law and we will petition the PERB Board, if necessary, to compel compliance with Taylor Law procedures.

In this regard, I yesterday received a telephone call from Mr. Dana Eischen who informed me that fact-finding will now be scheduled on January 24, 1977 at the Transportation Authority Board Room. Mr. Eischen will, by letter, be informing of the exact time.

Your client's original threat to enjoin fact-finding has already caused a delay in that fact-finding was originally scheduled to commence on December 21, 1976. We will now be losing more than one months time.

DEC 17 1976

Exhibit G — Letter from Barry M. Shulman to Blitman and King, dated 12-16-76 attached to King Supplementary Affidavit.

Azenfeld, Webb, Marshall, Bersani & Scolaro

PAGE II***DECEMBER 16, 1976

It is our position that the 13(c) Agreement clause which you seek to invoke is not only premature to discuss at this time, but is totally inapplicable to collective bargaining at the expiration of a contract term. The entire focus of a 13(c) Agreement is to protect labor which might have been adversely affected as the result of a Federal "project". I have carefully checked with Transportation Authorities throughout the United States in addition to completing my own research, and I am informed that while 13(c) arbitration has been often threatened to be invoked, that such threat has never been sustained by any court and that collective bargaining procedures created under State law have consistantly been followed to resolve issues which arise during collective bargaining at the expiration of a contract term.

We believe strongly in PERB and in the Taylor Law, which has served your clients and ours well, since the inception of our activities. We feel that PERB is the only proper forum and wish to proceed with no delay.

I would like to make one further personal comment. Until the articles quoting you were recently placed in Syracuse media, threatening Federal Court action among other things, neither party had negotiated in the press during collective bargaining. When questions have been asked, we have answered them but have not actually given stories of our impasse to the news media for publication.

The reason for this is simple. The Syracuse riding public, under the Syracuse Transit Corporation, was constantly barraged with strikes. This undermined the desire of the riding public and caused a fall-off in riders. Our public service, unlike school districts and other Governmental Agencies, is used voluntarily by our consumers. Any fall-off in ridership as the result of public uneasiness over whether and how well our busses will be rolling, undermines our revenue and our ridership gains and is counter-productive to the ends which both our clients and ourselves wish to achieve. It is critical to the Authority that news stories which are given emphasize its positive aspects. While it is true that no story which you gave to the press threatened a strike; in the minds of the public, any article about any labor dispute tends, in our opinion, to undermine public confidence.

I hope, as has been suggested by Mr. Eischen, that we can agree to move the negotiations forward, so that more valuable time will not be lost.

Very truly yours,

Barry M. Shulman

BMS/dl

cc: Mr. Dana Eischen
Mr. Warren H. Frank

Exhibit H — Letter from Bernard T. King to Barry M. Shulman, dated 12-21-76 attached to King Supplementary Affidavit.

December 21, 1976

Barry M. Shulman, Esq.
Axenfeld, Webb, Marshall, Bersani
& Scolaro
500 Building
500 South Salina Street
Syracuse, New York 13202

Re: Division 580, Amalgamated Transit Union
-and- CNY Centro, Inc.
Contract Dispute

Dear Mr. Shulman:

I have received your letter of December 16, 1976. I do not think it would serve any useful purpose to reiterate our position, already stated, as to the applicability of the 13(c) Agreement. With respect to your comments about recent articles in the Syracuse news media, I would just note that there were no statements issued with respect to Division 580's position in this dispute until after Mr. Frank's statements to the press.

Very truly yours,

BLITMAN AND KING

Bernard T. King

BTK/fbm

cc: Mr. Dana Eischen

George B. Wright, President
Amalgamated Transit Union, Divison 580

Joseph P. Welch, Business Agent
Amalgamated Transit Union, Division 580

Exhibit I — Letter from Dana E. Eischen to Bernard T. King, dated 1-21-76 attached to King Supplementary Affidavit.

DANA E. EISCHEN
ATTORNEY AT LAW

TELEPHONE (607) 257-4160

P. O. BOX 877
ITHACA, NEW YORK 14850

January 21, 1976

Bernard T. King, Esq.
351 South Warren Street
Syracuse, New York 13202

Barry M. Shulman, Esq.
500 South Salina Street
Syracuse, New York 13202

Re: PERB Case No. M76-731

CNY Centro, Inc.
and
Local Division 580
Amalgamated Transit Union

Gentlemen:

Confirming our recent telephone conversations, the fact-finding hearing set for January 24, 1977 has been adjourned at the request of Mr. King who has an unanticipated scheduling conflict. This matter shall now go forward at 10:00am, Wednesday, February 9, 1977.

Sincerely,

Dana E. Eischen
Fact-Finder

DEE/bw
CC: Erwin Kelly, PERB

JAN 29 1977

PROCEEDINGS BEFORE HON. LLOYD F. MacMAHON
on 2-21-77.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGUMATED TRANSIT WORKERS UNION

-against-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY
et al.

Motions in the above-entitled matter came on before the United States District Court, Northern District of New York, Syracuse, New York, February 21, 1977, before the Honorable Lloyd F. MacMahon, United States District Judge, presiding.

- - -

A P P E A R A N C E S:

AXENFELD, WEBB, MARSHALL & BESSONI, 500 South Salina Street, Syracuse, New York, Attorney for Defendant, Barry Shulman Central New York Regional Transportation Authority, its subsidiary corporations and its members.

JEROME THIER, 50 Wolf Road, Albany, New York, Counsel for PERB.

- and-

BLITMAN & KING, Chamber of Commerce Building, Syracuse, New York, Attorney for Plaintiff James R. LaVaute.

THE COURT: I don't know who will go go first. I think you have a motion and he has the cross motion.

MR. SHULMAN: Thank you, Your Honor. I will be very brief. This is a motion brought on under the --

THE COURT: Let me ask you if you have proceeded with the directions of the Court at the last session?

MR. SHULMAN: Yes, Your Honor, as soon as we finished --

THE COURT: I directed that the Taylor Law Hearing commence forthwith.

MR. SHULMAN: Yes, Your Honor.

THE COURT: That was ten days ago.

MR. SHULMAN: Yes, sir. I called the factfinder that afternoon. He was out and called me back later that afternoon and he told me that he would call both sides and arrange for factfinding at the next available date.

THE COURT: I don't regard that as compliance with my order to proceed forthwith.

MR. SHULMAN: Your Honor, the factfinding was set down for last Wednesday.

THE COURT: We are in such urgency here. And everybody is dragging their feet. All right, proceed.

MR. SHULMAN: The reason, Your Honor, that the factfinder felt that he shouldn't do it that day was that when he reached me, number one, it was later in the afternoon.

THE COURT: Why didn't he do it the next day? What has he been doing for fifteen days? What has got him so occupied?

MR. SHULMAN: I am not certain.

THE COURT: I am not either. I'm not very impressed. Proceed.

MR. SHULMAN: Factfinding was set for last Wednesday, the 16th, and the factfinder and Mr. LaVaute were occupied on another matter. They thought that might settle and factfinding could go forward. All parties have agreed to factfinding, and it is set, Your Honor, for March 9th. That is the next available date for the factfinder as well as for Mr. LaVaute. I shouldn't say that. For the factfinder. We have been ready to proceed Your Honor, and have been trying very hard to press it. This is a

motion for the dismissal of the complaint herein. The plaintiff, in his complaint, asked for a declaratory judgment that the 13-C agreement between the union and the authority defendants is a valid and enforceable agreement for binding arbitration over the instant dispute.

Secondly, judgment directing the employer to arbitrate the instant dispute pursuant to the 13-C agreement, and thirdly, judgment in joining the commencement or conducting of certain statutory impasse resolution procedures and New York Civil Service Law Section 209 and in joining the commencement or conducting of a fact finding hearing. I am reading that from page 1 of the brief submitted to me by plaintiff. It is our position, Your Honor, that the Court has already made this determination.

THE COURT: I made it preliminarily for purposes of preliminary injunction. That is not to say that I have made it defensively for a judgment. It is quite a leap isn't it?

MR. SHULMAN: The relief which is being

requested --

THE COURT: He asked for a preliminary injunction, that is what he asked for, and I denied it. That is not to say that his complaint doesn't state a claim for relief.

MR. SHULMAN: Except, Your Honor, that the complaint states a request for relief only as to the instant negotiations in -

MR. SHULMAN: Your Honor, reading from a brief of plaintiff, declaritory judgment --

THE COURT: Read it from his complaint, that is what governs it, not his brief.

MR. SHULMAN: Reading from paragraph 59 of the complaint, "Wherefor plaintiff's demand, a, a declaritory judgment that the 13-C agreement is a valid and enforceable agreement for binding arbitration of the dispute between plaintiff, the authority and Centro over the terms and conditions of a collective bargening agreement. B, a declaritory judgment that the 13-C agreement is an agreement setting forth procedures to be invoked in the event of disputes which reach an impasse in the

course of collective negotiations within the meaning of and authorized by the New York Civil Service Law, Section 209.2. See, a declaritory judgment that the 13-C agreement constitutes fair and equitable arrangement to protect the interests of employees within the meaning of 14 U.S.C. Section 1609C. D, a declaritory judgment that the conduct of a factfinding hearing by the PERB defendants would deprive plaintiff and its PERB members of their right under 49 U.S. Code Section 1609 to have their interests protected by fair and equitable arrangements in violation of 42 U.S.C. Section 1983. E, Judgment in joining the PERB defendants from the depriving plaintiff and its members of their rights under 49 U.S.C. Section 1609. F, Judgment injoining the PERB defendants, their agents, servants, employees and attorneys, and all persons in active concert in participation with them from causing the statutory impasse resolution procedures in New York Civil Service Law Section 209 to be commenced or conducted and from commencing and conducting a factfinding hearing over the contract dispute described herein. And G, that pending the final hearing

in determination of this action, the request for preliminary injunction." Which I won't continue reading.

Plaintiff, in its affidavit in support of cross-motion in an opposition to defendant's motion tendered to this Court here, characterizes in paragraph three thereof its action, the fact that plaintiff sees declaritory judgment in injunctive relief including, A, a declaratory judgment that the 13-C agreement between plaintiff and the authority defendants is a valid and enforceable agreement for binding arbitration over the instant dispute. B, Judgment directing the authority defendants to arbitrate the instant dispute pursuant to the section 13-C agreement.

THE COURT: This again is a characterization What it asks for is governed by its complaint and that is rather massive relief posing rather novel and serious questions of Law, as to which there are no precedents. It is hardly a likely place for the Court to grant a preliminary injunction, which, fundamentally, turns on a clear legal right, if you will remember your equity.

MR. SHULMAN: Yes, sir. Your Honor, it is merely our position that because of the actions of both parties prior to and subsequent to the order of this Court, that there is no relief left open to plaintiff in its complaint because the determinations regarding this negotiation have been made at this point.

THE COURT: I don't think that follows at all because the Court finds that as a preliminary matter the plaintiff has failed to show probable success on the merits in possibly irreperable injury for sufficiently serious questions going to the merits to make them a background for litigation, and a balance of hardships tipping decidedly toward the plaintiff. Now, because the Court finds that, and certainly by no means, follows that the Court found that the complaint failes the state a claim for relief or that there is no merits indicate proceed to a preliminary trial. That is quite a different proposition. I made no finding in that respect at all. We can't have a trial by affidavit here. That is what you are asking for.

MR. SHULMAN: Your Honor, it is our position

that there is no further relief which plaintiff could obtain at this point.

THE COURT: Sure it could. It could get the declaration that the agreement -- all the things he asked for. There isn't a single thing barring him except the preliminary injunction.

MR. SHULMAN: We rest at this point, Your Honor.

MR. KING: If the Court please, I am Bernard King of the law firm of LaVaute and King, and I would like to bring to the Court's attention that Mr. Barr is here, who is counsel for the Public Employment Relations Board. I didn't know whether or not the Court knew that he was here, so that he would have an opportunity to address some questions relative to what PERB's position is in this dispute.

I would like to clarify one other point. I don't know how important that is, but Your Honor it has to be relative to --

(Noise, interruption in the Courtroom-)

THE COURT: All right, I'm sorry Mr. King.

MR. KING: Thank you, Your Honor. Just to clarify one point. As I understand it, the arbitrator, factfinder did offer February 23rd as a date when he was available, and it was rejected by Centro. Just to clarify that one point. In other words, we were ready to go on the 13th and, as I understand, Centro was not prepared, and therefore, it went over the margin.

Another thing I would like to just clarify one fact, that I don't think was really developed very much at the preliminary injunction hearing, and primarily because it came on rather suddenly --

THE COURT: Preliminary injunctions always come on suddenly. That is the purpose of them.

MR. KING: I understand that, Your Honor, and we got some papers from counsel for Centro on the very day, the morning of the argument relative to this so called waiver in our tardiness in moving and so forth, so there really was nothing clarifying what actually had transpired. I think there was an impression created that we had somehow

sat on our hands with respect to moving for relief for stating our position if arbitration was to be the vehicle. And there is a supplemental affidavit before the Court, and I won't go through the whole thing but suffices to say that after mediation, a proposal was taken back to the membership, and the membership at that meeting, they rejected the employer's final proposal, rejected and directed the executive board to commence arbitration. This was like November the fifth. And November 11th, the president of the local wrote a letter attached to the supplemental affidavit, wrote a letter to Centro indicating the desires of membership. In other words, they had exhausted the voluntary means of contract negotiations and intended to go to arbitration. They came to me and I wrote a letter on November the 22nd demanding arbitration. And there were a series of correspondence between Centro and with PERB. Our efforts were first to convince PERB that there was an arbitration agreement, which superceded the proceeding of PERB, and that therefore, they should not go forward to the

factfinding. The PERB was, in the course of this, adjouring the factfinding to accommodate the resolution of the question. Centro would not voluntarily honor the arbritation. We finally went to PERB for an opinion of counsel. We wrote for an opinion of counsel. Mr. Barr, of PERB, wrote back stating that the arbitration cause was susceptible to an interpretation of being a binding arbitration which, legally, would supercede the PERB proceedings, but then tacked on the fact it was advisory only. We attempted to get the mediation division of PERB who assigns PERB the factfinder to accept that advisory opinion as giving up the right to arbitration and not to go to factfinding. We finally came to the conclusion that the only way we could do it was to go to a Court proceeding to get a judgment, that is what we finally did. But there was movement all the way through, in the position of the union was stated as early as November 11th in writing.

THE COURT: That was all before me.

MR. KING: Excuse me?

THE COURT: That was before me at the

last hearing.

MR. KING: All right, if that was clear, Your Honor. I was afraid perhaps it wasn't because there were certain statements in Mr. Shulman's affidavit indicating this was a newfound position in December and that was certainly not the case. Essentially, as I see it, Your Honor, the question that we come down to is the question of whether or not proceeding as far as mediation with PERB we have waived our right to utilize the arbitration procedures of the contract. And I feel that we have to some extent covered those legal points in our memorandum.

THE COURT: I don't think you are in any better position on the cross-motion for summary judgment than is your adversary on a motion for summary judgment. You file a complaint that raises a myriad of problems. The move for a preliminary injunction which I denied simply on the ground that you can't show a clear legal right to relief for such serious crises going to the merit that everything should be held in abeyance. The reasons for

that are perfectly clear. These are problems of first impression. There is no authority for any of these propositions that you tendered here. Rule on the preliminary matter as I did here is not to say that you are entitled to a summary judgment. That is a long ways from where you stand now, or not to say that the other side is entitled to a summary judgment. All I held is that you were not entitled to a preliminary injunction, and I adhere to that. You are not entitled to preliminary injunction for the reasons which I stated on the record, and in my memorandum of February 9th. But you have got a can of worms here with all kinds of issues of fact going to the intent of the parties, until the full meaning of all these agreements that are involved here, to whether the underlying collective bargaining agreement has expired, whether it is superceded by this tri-party agreement with Centro, whether there has been a waiver, which I found there had been preliminarily, sufficient to refute you for preliminary injunction. But that is not to say that on a plenary trial you couldn't prove that you had no

waived. Those issues of fact are open. They are all open and it can't be decided by affidavit or by argument. It seems to me it requires a plenary trial.

MR. KING: On the question, Your Honor, of the waiver point, and the necessity of a trial, the cases do seem to indicate that that question had best be left to the arbitrator.

THE COURT: Of course, that depends initially on whether you have got a valid agreement to arbitrate, which in turn, depends on resolution of all these various issues of fact. On whether there is such an agreement, I suppose is a question of fact turning esentially on what the parties intended here, beyond all of this paper work that we have here. I don't think this case anywhere near right for an ultimate determination at all. I think there are just too many uncertain questions of Law, too many issues of fact which are all up in the air.

MR. KING: I don't interpret plaintiff's position as being that we denied the existence of the agreement, Your Honor, and the amended

agreement does contain the language --

THE COURT: There is more to it than language, more to it than language.

MR. KING: It is a question of whether or not this dispute, of course, in a broadly stated arbritration clause comes within the confines and as a violation, it would go, in the first instance to the arbritrator I would think.

THE COURT: Again, it depends on whether you have got an agreement, and that is the key issue here, one of the key issues, whether you waive it if you do have it, whether you have an agreement.

MR. KING: I don't understand, Your Honor, defendant Centro communicating that we do not have an agreement.

THE COURT: That was certainly their position on a preliminary injunction.

MR. KING: They never denied we have an agreement, and we have offered copies.

THE COURT: Well, on the contrary, he has an affidavit which says your agreement is expired. Isn't that so?

MR. SHULMAN: Yes, Your Honor, we have

in our moving papers, put forth a national 13-C agreement which is a newer and different agreement with different language.

THE COURT: Your whole position was that was not a collective bargaining agreement.

MR. SHULMAN: Yes, Your Honor.

MR. KING: Well, as I understand, they are contending, apparently it is superceded. They are not contending there was not an agreement.

MR. SHULMAN: In addition to our contention that it was superceded, we also contend that it was drawn for a limited purpose of obtaining Federal funding and not for collective bargaining issues at the expiration of a contract.

THE COURT: These were all issues for purposes of a preliminary injunction in the urgent, what was represented to be an urgent situation, which now doesn't seem so urgent. Since everything can be put off until March, I don't see a great urgency. But what was represented to the Court to be an urgent situation that this thing had to go forward tomorrow, and on the basis of that, I ran over

here from Utica and held a hearing to determine whether this temporary restraining order should remain in full force and affect or whether it shouldn't. And since that involves substantially the same issue as the motion for a preliminary injunction, I treated it as the argument on a motion for a preliminary injunction and denied it and vacated the T.R.O.

Now, that's where you stand procedurely. That is a long ways from saying that, you know, ipse dixit, one party or the other get a final judgment here.

MR. KING: Well, I read your decision, Your Honor, as indicating that certain issues were in a particular posture, and frankly, what I was hoping to do today was to --

THE COURT: On the motion for a preliminary injunction, they were in that posture.

MR. KING: I was hoping today to convince you that the waiver proposition has some policy drawbacks and has some legal problems with it.

THE COURT: It may very well, but my finding as a preliminary matter stands.

MR. KING: I understand that as --

THE COURT: But when I say all parties can see that there were no issues of fact requiring an evidentiary hearing and that the motion was right for decision, is not to say there aren't any issues of fact requiring a plenary trial. There are all kinds of them, it seems to me.

MR. KING: Well, I understand your decision to certainly on a preliminary injunction context. I would like to just make a couple comments on their waiver theory, I think, that are pertinent, Your Honor. And I think rather than getting into a lot of legal points, maybe just very quickly then I would like to address myself to some practical policies.

THE COURT: Well, to what end? I am not going to grant you a summary judgment, nor am I going to grant the other side a summary judgment. I am not going to dismiss your complaint. Your arguments may be perfectly valid good arguments following a preliminary trial for a hearing of stipulated the facts, but at the moment this thing just

isn't right for that.

MR. KING: With that in mind, I think I will save these remarks.

THE COURT: I just don't see what end. I mean, if you want to talk, I'm perfectly willing to hear you.

MR. KING: No, I've got lots of other places to talk and you have got lots of other things to listen to, Your Honor.

THE COURT: It just isn't in that posture in this case, that's all.

MR. KING: Well, do I read Your Honor as directing this to a trial, is that --

THE COURT: No, I'm not directing it to a trial. I am denying your motion for a summary judgment and denying the motion to dismiss your complaint and the cross-motion for a summary judgment, that is what I'm doing. Now, whether you go to trial is up to you, not up to me. You are the adversaries.

I guess that's it.

MR. SHULMAN: Thank you, Your Honor.

THE CLERK: Court stands in recess.

MOTION FOR STAY PENDING APPEAL TO DISTRICT COURT

ORDER TO SHOW CAUSE, dated March 1977.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO, Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, et al., Defendants.	Civil Action No. 77-CV-45

Upon the annexed Motion and Affidavit of Jules L. Smith and the Exhibits thereto attached, it is

ORDERED, that the Defendants show cause at a Motion Term of this Court, to be held at the United States Court House, Foley Square, New York, New York, on the 7th day of March, 1977, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be made herein pursuant to Rule 8 of the Federal Rules of Appellate Procedure and Rule 62 of the Federal Rules of Civil Procedure, granting an injunction pending appeal and/or staying the operation of the Order of this Court entered on February 11, 1977, which denied the Plaintiff's Motion for a Preliminary Injunction and vacated the Temporary Restraining Order previously issued herein; fixing the amount of a Supersedeas Bond; and for such other and further relief as to this Court seems just and proper;

IT IS FURTHER ORDERED, that service of a copy of this Order and the papers upon which the same is granted, on the Attorneys for the Defendants by either delivering same or mailing same to their offices, on or before March 2, 1977, shall be sufficient service of this Order.

Dated: March ___, 1977

United States District Judge

MOTION FOR ORDER TO SHOW CAUSE, STAY AND SUPERSEDEAS.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO, Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, et al., Defendants.	Civil Action No. 77-CV-45

Plaintiff moves the Court as follows:

1. For an order to show cause shortening the time within which to bring on this Motion, pursuant to Fed. R. Civ. Proc., Rules 6 and 7;

2. For an injunction pending appeal, pursuant to Fed. R. Civ. Proc., Rule 62, restoring the Temporary Restraining Order vacated by Order of this Court entered February 11, 1977 and/or granting the Preliminary Injunction prayed for by Plaintiff, which was denied by Order of this Court entered February 11, 1977; and/or

3. Pursuant to FRAP Rule 8 and Fed. R. Civ. Proc., Rule 62, for a stay pending appeal of the operation and enforcement of the Order of this Court entered on February 11, 1977, which denied Plaintiff's Motion for a Preliminary Injunction and vacated the Temporary Restraining Order previously granted herein; and

4. To fix the amount of the bond required to be filed by Plaintiff in the amount of $250.00 pursuant to Rule 29 of the General Rules of the United States District Court, Northern District of New York, FRAP, Rule 8 and Fed. R. Civ. Proc., Rule 62.

The grounds of this Motion are more fully set forth in the annexed Affidavit of Jules L. Smith.

MOTION FOR ORDER TO SHOW CAUSE, STAY AND SUPERSEDEAS.

WHEREFORE, Plaintiff moves the Court for an order in the form attached requiring the Defendants to show cause why an injunction and/or stay pending appeal should not issue herein and, upon return of said order, issuing an injunction pending appeal, enjoining the PERB Defendants from commencing or conducting any factfinding hearing, or otherwise instituting or conducting impasse resolution procedures pursuant to New York Civil Service Law Section 209, and/or staying the operation and enforcement of this Court's Order, entered February 11, 1977, which denied Plaintiff's Motion for a Preliminary Injunction and vacated the Temporary Restraining Order previously issued, fixing the Bond Plaintiff must file in the amount of $250.00, and such other and further relief as to this Court seems just and proper.

DATED: March 1, 1977

BLITMAN AND KING

BY: Jules L. Smith
Jules L. Smith, Esq.

Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, NY 13202

Telephone: (315) 422-7111

TO: AXENFELD, WEBB, MARSHALL,
BERSANI & SCOLARO
Attorneys for Authority Defendants
500 Building
500 South Salina Street
Syracuse, NY 13202

MARTIN L. BARR, ESQ.
Attorney for PERB Defendants
Public Employment Relations Board
50 Wolf Road
Albany, NY 12226

AFFIDAVIT OF JULES L. SMITH IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO, Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, et al., Defendants.	Civil Action No. 77-CV-45

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

JULES L. SMITH, being duly sworn, deposes and says:

1. I am a partner in the law firm of Blitman and King, Attorneys for Plaintiff, Division 580, Amalgamated Transit Union, AFL-CIO ["Union"] in the above-captioned action.

2. I make this Affidavit for: an order to show cause; an injunction pending appeal and/or a stay of the enforcement of the Order of this Court entered February 11, 1977; and the fixing of the bond to be filed herein by Plaintiff in the amount of $250.00.

3. This action was commenced on February 7, 1977, seeking, in essence, to compel arbitration and to enjoin Defendants from pursuing certain impasse resolution procedures contained in New York Civil Service Law Section 209.

4. On February 7, 1977, the Court granted a Temporary Restraining Order enjoining Defendants Robert D. Helsby, Joseph R. Crowley and Ida Klaus, together constituting the New York Public Employment Relations Board [the "PERB" Defendants] from, inter alia, commencing or conducting a factfinding hearing concerning the dispute between the parties pursuant to New York Civil Service Law Section 209.

5. On February 9, 1977, argument was presented to the Court concerning Plaintiff's Motion for a Preliminary Injunction.

6. By that Preliminary Injunction, Plaintiff sought to restrain the PERB Defendants and Defendant Dana E. Eischen from, among other things, conducting the aforesaid factfinding hearing or otherwise causing the impasse resolution procedures set forth in N.Y. Civil Service Law, Section 209, to be commenced or conducted.

7. However, on February 9, 1977, the Court denied Plaintiff's Motion and vacated the Temporary Restraining Order previously issued. A copy of the Court's Order, which was entered February 11, 1977, and Decision is annexed hereto as Exhibit "A".

8. Thereafter, by Notice of Motion dated February 10, 1977, the Authority Defendants moved to dismiss the Complaint and/or for summary judgment. The Plaintiff then cross-moved, also for summary judgment.

9. On February 21, 1977, argument was presented to the Court on the various motions. The Court, however, denied all motions.

10. Thereafter, i.e. on March 1, 1977, the Plaintiff commenced its appeal of the Court's denial of its Motion for a Preliminary Injunction.

MORE PARTICULARLY AS TO
ORDER TO SHOW CAUSE

11. Plaintiff respectfully prays that an order to show cause issue herein bringing this matter on for hearing prior to March 9, 1977.

12. Such an order is necessary herein to protect the rights of the Plaintiff.

13. Plaintiff's attorneys have been advised by Defendant Eischen that a factfinding hearing will be scheduled herein on

March 9, 1977. Annexed hereto as Exhibit "B" is a copy of Defendant Eischen's letter scheduling the said factfinding hearing.

14. Thus, an order to show cause is necessary herein so that Plaintiff's Motion for an injunction and/or stay pending appeal may be heard prior to such factfinding hearing.

MORE PARTICULARLY AS TO
INJUNCTION AND/OR STAY
PENDING APPEAL

15. An injunction and/or stay pending appeal is necessary herein to protect the rights of the Plaintiff. Such an order is warranted herein since Defendants will suffer no harm, whatever, if granted, whereas Plaintiff will suffer irreparable harm if not granted.

16. Plaintiff has commenced appealing the Court's denial of its Motion for a Preliminary Injunction. Annexed hereto as Exhibit "C" is a copy of Plaintiff's Notice of Appeal mailed by Deponent to the Clerk of the Federal District Court, Northern District, on March 1, 1977, along with a Supersedeas Bond in the amount of $250.00 and the appropriate filing fees, all as required.

17. However, prior to the time said appeal can be heard, the factfinding hearing will be held and, upon information and belief, a legislative settlement of the dispute will be imposed upon Plaintiff, all allegedly pursuant to N.Y.C.S.L. Section 209.

18. Plaintiff, however, has a clear right to arbitrate the dispute pursuant to the 13(c) agreement between the parties.

19. This Court has ruled that by participating in mediation proceedings, pursuant to said Section 209, it waived its right to arbitration.

20. Thus, further participation in those Section 209 procedures may well be considered further waiver of the Plaintiff's arbitration rights.

21. In any event, if the legislative resolution is imposed upon Plaintiff prior to its appeal being heard, such appeal, upon information and belief, will become moot, since said legislative resolution would allegedly resolve the dispute between the parties.

22. Furthermore, Plaintiff will be irreparably harmed in being forced to expend substantial time and money participating in the factfinding hearing when ultimately the dispute will be referred to arbitration.

23. Finally, Defendants will suffer no harm whatsoever by enjoining factfinding pending this appeal. The Authority Defendants will be required to expend no monies nor be required to do anything if an injunction and/or stay is granted pending appeal.

MORE PARTICULARLY AS TO
FIXING AMOUNT OF BOND

24. It is submitted that a Bond in the amount of $250.00, already obtained, will adequately protect the Defendants herein pending appeal.

25. As stated supra, Defendants will be in no way inconvenienced or harmed if an injunction and/or stay is granted herein pending appeal. Thus, the posting of a Bond to secure Defendants costs herein is adequate to protect the Defendants in the event they prevail on this appeal.

WHEREFORE, Plaintiff moves the Court for an order in the form attached requiring the Defendants to show cause why an injunction and/or stay pending appeal should not issue herein and, upon return of said order, issuing an injunction pending appeal, enjoining the PERB Defendants from commencing or conducting any factfinding hearing, or otherwise instituting or conducting

impasse resolution procedures pursuant to New York Civil Service Law Section 209, and/or staying the operation and enforcement of this Court's Order, entered February 11, 1977, which denied Plaintiff's Motion for a Preliminary Injunction and vacated the Temporary Restraining Order previously issued, fixing the Bond Plaintiff must file in the amount of $250.00, and such other and further relief as to this Court seems just and proper.

Jules L. Smith
JULES L. SMITH

Sworn to before me this
1st day of March, 1977.

Judy M. Huntley
Notary Public

JUDY M. HUNTLEY
Notary Public in the State of New York
Qualified in [illegible] Co. No. 4628965
My Commission Expires March 30, 1978

Exhibit A – Endorsement, dated 2-11-77 and Proceedings, dated 2-9-77 annexed to Smith Affidavit.

Division 587, Amalgamated Transit Union, AFL-CIO -v- Central New York Regional Transportation Authority et al.

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
FEB 11 1977
AT O'CLOCK M.
J. R. SCULLY, Clerk
UTICA

ENDORSEMENT
77-CV-45

Upon oral argument of the within motion for a preliminary injunction, all parties conceded that there were no issues of fact requiring an evidentiary hearing and that the motion was ripe for decision. Following oral argument, the court, therefore, made and dictated its findings of fact and conclusions of law into the record.

Based on the arguments, the papers submitted in support of and in opposition to this motion, and on the court's reasons, findings and conclusions placed on the record, the within motion for a preliminary injunction is denied in all respects since plaintiff has failed to make a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward plaintiff. See Sonesta Int'l Hotels Corp. v. Wellington Associates, 483 F.2d 247 (2d Cir. 1973).

Defendants' cross-motion to vacate the temporary restraining order is granted, and the parties directed to proceed forthwith with the fact-finding procedures of the Taylor Law.

So ordered.

Dated: Syracuse, N. Y.
February 9, 1977

Lloyd F. MacMahon

LLOYD F. MacMAHON*
United States District Judge

Exhibit A — Endorsement, dated 2-11-77 and Proceedings, dated 2-9-77 annexed to Smith Affidavit.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----------x

In the Matter of :

:

Amalgamated Transit Union,
AFL-CIO 617, Syracuse, New York :

:

Plaintiff :

:

- and - :

:

Central New York Regional Transportation
Authority, et. al. :

:

Defendants :

----------x

Proceedings in the above-entitled matter came on before the United States District Court Northern District of New York, at Syracuse, New York, February 9, 1977, before the HONORABLE LLOYD F. MACMAHON, presiding.

Exhibit A — Endorsement, dated 2-11-77 and Proceedings, dated 2-9-77 annexed to Smith Affidavit.

2

A P P E A R A N C E S

BARRY M. SEULMAN: Counsel for Central New York Regional Transportation Authority and Subsidiary and Directors.

WARRAN H. FRANK: Executive Director of Central New York Regional Transportation Authority.

WARRAN WOODRUFF: Vice President of Subsidiary Appropriations.

RUSSELL FERDINAND: Chief Financial Officer of Central New York Regional Transportation Authority.

— and —

JAMES LAVAUTE: Attorney for Plaintiff

JOSEPH WELCH: Business Agent for Amalgamated Transit Unit LD580

GEORGE WRIGET: President of Amalgamated Transit Unit.

THE COURT: This matter came on the Plaintiff's application for a temporary injunction before Judge Munson on February 7, 1977. Judge Munson was disqualified, I think, because a firm with which he was formerly associated represented a defendant on earlier occasions. In any event, he summarized the papers for me, and at my direction, signed my name to the temporary restraining order simply to keep the status quo pending an opportunity andtime by the Court to hear the application. The Court, as Judge MacMahon is sitting by designation in Utica at the time of this application on February 7, I was sitting in a trial which fortunately settled yesterday afternoon, and enabling me following some telephone calls to my secretary by Mr. Shulman and his urgent request that this matter be heard on a Motion to Vacate it at once. The case that I was presiding on settled yesterday afternoon, I checked with the Clerk, the Deputy Clerk, Jim Evans, to contact Mr. Shulman and get the parties available to hear his application to vacate the stay this morning at 11 A.M. here in Syracuse. The Court has read the papers and considered the exhibits and listened

carefully to the arguments of counsel. This matter was expedited because the hearing under the fact finding procedures of the New York State Taylor Law were scheduled to commence this morning at 10 o'clock, and it was with prompt resolution of this matter to the end, -- so those hearings could go forward, if they were being properly held, that I accelerated the return day of this application from the 15th of February to this morning on the 9th of February at 11 o'clock. There can be no question that this action and application for a declaration or judgement or a temporary restraining order and injunctive relief raises novel questions on the merits, and that more time might vastly improve the substance and or not the substance, but -- still and perhaps the elabortion of the Court's views about this matter having heard arguments, I am comvinced, however, that it would not alter my ultimate conclusion nor affect in any significant way the substance of my opinion about it. There is no factual issue, both parties concede, requiring any Evidentiary Hearing, and both parties concede that the

matter is now ripe for decision on the merits. It is clear to the Court that there is an underlying collective bargaining agreement which expired on November 1, 1976. Under that agreement, there is no question that labor disputes and disputes concerning working conditions were to be submitted to arbitration. There is likewise no dispute that what has been refered to here as the 13(c) agreement was entered into, which on its face in paragraph nine states that in the case of any labor dispute or collective bargaining does not result in agreement, the same may be submitted at the written request of either party to a board and arbitration composed of three persons, etcetera. The same paragraph goes on to define the term labor dispute, shall be broadly construed and shall include any controversy concerning wages, salaries, working conditions or benefits including health and welfare, sick leave insurance and pension retirement provisions, the making or maintenance of collective bargaining agreement, the terms to be included in such agreement, the interpretation of such agreement, or application of such agreement, the adjustment of grievances,

any claim difficulty or controversy arrising out of or by virtue any provisions of this agreement for protection of employees effected by the project. The Court thinks it is plain that under the very language of this agreement interest disputes of the kind that we have here looking to renewal or maintenance of collective bargaining agreement are clearly covered. Likewise, the Court feels confident that the very purpose of this 13(c) agreement is to assure that the matter that labor disputes or disputes of this type involved here as well as others would be submitted to arbitration, the binding arbitration, with a view that there be no interruption of the public service involved in all of these systems of mass transportation, and that when the Federal Government took over these private systems that the public interest in uninterrupted services would be best preserved by compulsory arbitration. Certainly, that isn't any novel concept in Federal Law. It has long been the thesis underlying the Railway Labor Act, to mention only one phase of it as well as the National Labor Relation Act. But, in

the field of transportation, the Federal Government certainly in the field of Federal Interstate Transportation feels that there should be various mediation factfinding procedures and ultimately binding arbitration. The words that the amendment to this agreement I think on its face has a saving clause that prevents any superceding or loss of prior rights concerning labor disputes and arbitration. That is expressly -- I don't see it readily at hand, but it is in the record, it was read at the time and there isn't any question that there is such a clause. I think the authority there -- here reads the word project far too narrowly. The project part evenly includes the act which describes not only certain pieces of equipment or real estate or other facilities, but the assets, the business, the business is a going concern, which of course was the case here. So, that I think it can -- any fair reading of this, any reasonable reading of it has got to include this situation within the term project so that it is not in any way excepted from the operation of this 13(c) agreement. It

is clear, I think, also by paragraph four of page two that this falls within this 13(c) agreement, falls within any other agreement, surely all of the parties to the 13(c) agreement were aware of its existance and did not tend to confine it to the underlying collective bargaining agreement because it had -- they could well have left it with collective bargaining agreement and not added the phrase any other agreement. I therefore think that the union is entitled to go to arbitration in this matter. There is one troubling question, and that is whether the union has waived whatever right it might have had under this 13(c) agreement by its request for the appointment of a mediator under the Taylor Law. Surely the union has to be aware that that is step one under the procedures for resolving labor disputes short of strikes, and there can't be any question that the union did invoke the Taylor Law. Whether it intended to invoke it all the way is not clear, but we think it clear that you can't have it half way under the Taylor Law. You either invoke its benefits and procedures

or you reject them, and I think once you invoke it by asking for the appointment of a mediator, you elect to follow that procedure. There can't be any question that this was a knowing and choice made by the union. This conclusion, I think, is fortified by the fact that not withstanding, the impass was reached here a long time ago, and this application is a newly minted one. The feeling, it seems quite clear to me, that it is an afterthought in an attempt, a belated attempt to get out from under this question and escape the Taylor Law. I think, therefore, that while the union might have been on good ground had it taken the course it now takes initially, that it is no longer on good ground, that it did waive whatever rights it might have had under the 13(c) agreement to arbitration, and has voluntarily and intentionally submitted to the procedures of the New York State Taylor Law. The factfinding procedures have been standing by ready to proceed, and I see no reason why they should not proceed forthwith. Accordingly, the Court vacates the stay. One more point, I think it is plain that the Court here does have federal question and jurisdiction,

but we vacate the stay, and I think dismiss the complaint. Is there any reason why we shouldn't dismiss the complaint?

MR. LAVAUTE: Well, Your Honor, I have to give that some thought. I wouldn't want to dismiss the complaint, I would want to carry it through.

THE COURT: Well, it isn't necessary at this point, I simply would deny your application for a preliminary injunction, and what the Court has said will constitute my findings of facts and conclusion of law. My only reservation is they are in very rough form, as they must necessarily be in the urgency of the situation.

MR. LAVAUTE: Your ruling applies to the motion for preliminary injunction?

THE COURT: That is right.

MR. LAVAUTE: Yes, we do wish to dismiss the complaint.

THE COURT: We won't dismiss the complaint at this stage.

(Whereupon the proceeding was adjourned)

R E P O R T E R ' S C E R T I F I C A T I O N

I, Armand J. Roberts, Official Court Reporter for the United States District Court in and for the Northern District of New York, do certify this to be a true and accurate transcription of the stenographic notes as made by me during the aforesaid proceedings.

Armand J. Roberts
Official Court Reporter
United States District Court

ALBANY, NEW YORK
FEBRUARY 12, 1977

Exhibit B – Letter from Dana E. Eischen to Bernard T. King annexed to Smith Affidavit.

DANA E. EISCHEN
ATTORNEY AT LAW

TELEPHONE (607) 257-4160

P. O. BOX 877
ITHACA, NEW YORK 14850

February 24, 1977

Bernard T. King, Esq.
351 South Warren Street
Syracuse, New York 13202

Barry M. Shulman, Esq.
500 South Salina Street
Syracuse, New York 13202

Re: PERB Case No. M76-731 - CNY Centro, Inc., and Local Division 580, Amalgamated Transit Union

Gentlemen:

Confirming recent telephone conversations with your respective offices, the hearing in the above-referenced case will now be held on March 9, 1977.

I look forward to seeing you at that time.

Sincerely,

Dana E. Eischen
Fact-Finder

DEE:MO

cc: Mr. Harold Newman
PERB

RECEIVED
FEB 25 1977
BLITMAN & KING

Exhibit C – Notice of Appeal annexed to Smith Affidavit.

NITED STATES DISTRICT COURT
ORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT
JNION, AFL-CIO
517 Wolf Street
Syracuse, New York 13208

Plaintiff,

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York; CNY CENTRO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of OSWEGO, INC., 508 Midtown Plaza, Syracuse, New York; CENTRO of CAYUGA, INC., 508 Midtown Plaza, Syracuse, New York; ROYAL L. O'DAY, Individually and as Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; JOHN W. STONE, JR., Individually and as Vice Chairman and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc. and Centro of Cayuga, Inc.; WARREN W. FRANK, Individually and as Member and Executive Director of Central New York Regional Transportation Authority, and as President of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; J. GREGORY MERRIAM, Individually and as Secretary and Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; DR. KENNETH G. BARTLETT, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD L. FISHER, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; ROBERT M. GILMARTIN, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; HAROLD W. ORCHARD, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.; and LESLIE J.

NOTICE OF APPEAL

Civil Action No.

77-CV-45

Exhibit C — Notice of Appeal annexed to Smith Affidavit.

PARNELL, Individually and as Member of Central New York Regional Transportation Authority, and as Director of CNY Centro, Inc., Centro of Oswego, Inc., and Centro of Cayuga, Inc.;

ROBERT D. HELSBY, JOSEPH R. CROWLEY and IDA KLAUS, together constituting the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, 50 Wolf Road, Albany, New York, 12205; HAROLD R. NEWMAN, as Director of Conciliation, New York State Public Employment Relations Board; and DANA E. EISCHEN, as Factfinder, New York State Public Employment Relations Board;

Defendants.

NOTICE OF APPEAL

Notice is hereby given that Division 580, Amalgamated Transit Union, AFL-CIO, Plaintiff above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order denying the Plaintiff's Motion for a Preliminary Injunction and granting Defendant's Cross-Motion to vacate the Temporary Restraining Order, entered in this action on the 11th day of February, 1977.

DATED: March 1, 1977.

BLITMAN AND KING

BY: Jules L. Smith
Jules L. Smith

Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

Telephone: (315) 422-7111

CERTIFICATE OF SERVICE.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO, Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, et al., Defendants.	Civil Action No. 77-CV-45

CERTIFICATE OF SERVICE

I, JULES L. SMITH, Attorney for Plaintiff, Division 580, Amalgamated Transit Union, AFL-CIO, hereby certify that on the 1st day of March, 1977, I served the attached Order to Show Cause, Motion, Affidavit and Exhibits upon the parties hereto by serving their attorneys as follows:

1. By delivering copies of the said papers to the offices of the attorneys for the Authority Defendants at the address listed below and by leaving same with a person in charge:

Axenfeld, Webb, Marshall,
Bersani & Scolaro
Attorneys for Authority Defendants
500 Building
500 South Salina Street
Syracuse, New York 13202

2. By depositing copies of the said papers in the United States Mail, postpaid, addressed to the attorney for the PERB Defendants at his last known address, to wit:

Martin L. Barr, Esq.
Attorney for PERB Defendants
Public Employment Relations Board
50 Wolf Road
Albany, New York 12226

CERTIFICATE OF SERVICE.

BLITMAN AND KING

BY: Jules L. Smith
Jules L. Smith, Esq.

Attorneys for Plaintiff
Office and Post Office Address
500 Chamber Building
351 South Warren Street
Syracuse, NY 13202

Telephone: (315) 422-7111

DATED: March 1, 1977

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, STAY ON APPEAL AND SUPERSEDEAS.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----------x

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO,

Plaintiff,

-against-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, et al.,

Defendants.

----------x

Civil Action No. 77-CV-45

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

BARRY M. SHULMAN, being duly sworn, deposes and says:

1. That he is an attorney duly licensed to practice law in the United States District Court for the Northern District of New York. That he is a member of the law offices of AXENFELD, WEBB, MARSHALL, BERSANI & SCOLARO, attorneys for the CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, its subsidiary corporations and members, directors and employees of defendants herein.

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, STAY ON APPEAL AND SUPERSEDEAS.

2. This affidavit is in opposition to plaintiff's motion for an order to show cause, an injunction pending appeal and/or a stay of the enforcement of the order of this Court entered February 11, 1977; and the fixing of the bond to be filed herein by plaintiff in the amount of $250.00.

3. Annexed hereto as Exhibit "A" is the endorsement of this Court filed with the Court Clerk on February 11, 1977.

4. Annexed hereto as Exhibit "B" is the answer which your deponent's clients, as defendants, are interposing.

5. Since the determination of this Court rendered in Exhibit "A", the parties hereto have jointly agreed on successive dates for factfinding under the Taylor Law. The first date tentatively set by the factfinder was February 16, 1977, but this date was adjourned to March 9, 1977 because the attorneys for plaintiff herein and the factfinder were involved in another factfinding on February 16, 1977. The letter of the PERB factfinder confirming the agreed upon date of March 9, 1977 for factfinding is annexed as Exhibit "B" to plaintiff's motion papers.

6. Instead of moving for the relief which it now seeks upon the filing of the endorsement on February 11, 1977, plaintiff's counsel make their motion on the eve of factfinding when defendants, represented by your deponent have now, for the fourth time, prepared to go forward with factfinding.

7. Plaintiff, in its motion papers, claim that a stay pending appeal is necessary to protect its rights and that plaintiff will suffer irreparable harm and that defendants appearing herein will suffer no harm if the stay is granted. Plaintiff alleges that it will be irreparably harmed because of the expense of time and money in preparation for factfinding in the event that the Court concludes its eventual right to arbitration.

8. Defendants appearing herein dispute the conclusion of plaintiff that arbitration is inevitable and further deny that there is any expense of time and money in preparing for factfinding. Factfinding is a relatively informal proceeding for the resolution of impasses under the Taylor Law.

9. By plaintiff's own alleged standard, defendants have already been irreparably harmed by

preparing for factfinding on four separate occasions.

10. The standards which the Federal District Court has adopted in determining whether a stay pending appeal should be granted (see for example Stop H-3 Association v. Volpe, 353 F. Supp. 14 [1972]) are as follows:

> "(a) After the applicant for a stay has made a strong showing that he is likely to succeed on the merits of the appeal;
> (b) After the applicant has established that unless a stay is granted he will suffer irreparable injury;
> (c) If the applicant for a stay can show that no substantial harm will come to other interested parties; and
> (d) If the Court finds that granting the stay will do no harm to the public interest."

11. In the first test stated above, the applicant for a stay has to make a strong showing that he is likely to succeed on the merits of the appeal. This Court, in its endorsement annexed hereto as Exhibit "A", states:

> "... the within motion for a preliminary injunction is denied in all respects since plaintiff has failed to make a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make tham a fair ground for litigation and a balance of hardships tipping decidedly toward plaintiff."

AFFIDAVIT OF BARRY M. SHULMAN IN OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, STAY ON APPEAL AND SUPERSEDEAS.

12. This Court has been given no new fact or allegation by plaintiff in its motion papers to persuade this Court to reverse its decision of less than one month ago.

13. Your deponent has, as yet, not been able to obtain the transcript of a second hearing held before this Court on February 22, 1977 in which the Court recounted many of the questions of fact, which are raised as defenses and denials in defendants' answer annexed hereto as Exhibit "B".

14. It is your deponent's contention that the likelihood in this litigation that defendants will succeed on the merits, not only of the basic litigation but also of the appeal, since the denial of an application for a preliminary injunction is a matter with the lower Court's discretion, and which will not be reversed unless that discretion has been abused.

15. The second test for a stay requires the applicant to establish that, unless a stay is granted, he will suffer irreparable injury.

16. Plaintiff cannot establish irreparable injury. This motion has been brought on the eve of

factfinding. Plaintiff must have been preparing for factfinding in the event its application for factfinding would be denied. Additionally, factfinding does not result in a mandatory resolution of the impasse, but is advisory. It is the hope of defendants appearing herein that proceeding to factfinding under the Taylor Law will result in a settlement of this litigation.

17. For plaintiff to allege as its only basis for irreparably injury that it is being put to great time and expense in preparing for litigation is ludicrous. Factfinding is an informal hearing. Once plaintiff has prepared for factfinding, it will be prepared for arbitration in the event that it suceeds in the basic litigation. The preparation for factfinding and for arbitration is essentially the same and hardly amounts to irreparable harm.

18. Both parties hereto have already participated "voluntarily and intentionally" in mediation under the Taylor Law for which the preparation by plaintiff was likewise required.

19. The third standard for a stay on appeal

requires the applicant to show no substantial harm will come to other interested parties.

20. In the event that a stay is granted, defendants appearing herein will suffer irreparable harm.

21. Defendants herein are agencies of the State of New York and are members, directors and employees acting in their official capacity. They have questioned the jurisdiction of this Court over them and over the issues raised in this litigation. They have as their concern the riding public in the CENTRAL NEW YORK REGIONAL TRANSPORTATION DISTRICT, as well as their public employees. They have participated under the Taylor Law with plaintiff and have, since December 21, 1976, been trying to move into factfinding. Now factfinding is set for March 9, 1977. It is hoped that it will result in a resolution of the issues between the parties.

22. By plaintiff's own standard of irreparable harm, to wit: the cost and expense of factfinding, it is respectfully sumbitted that the defendants appearing herein have prepared on four separate occasions for factfinding, and if it does not go forward, they will, by plaintiff's own standard, be irreparably harmed.

23. It is contended that plaintiffs are spending more time and money on last minute legal maneuvers and applications, such as is presented here, than preparing for factfinding would require.

24. Finally, the Court must find, in order to grant a stay on appeal, that granting the stay will do no harm to the public interest.

25. Defendants contend that the Taylor Law of the State of New York is the best evidence of what the legislature of the State of New York considered to be in the public interest. The Taylor Law has as one of its bases the speedy resolution of impasses in negotiation.

26. The parties to this litigation have already engaged themselves under the Taylor Law. In plaintiffs' desire to create a test piece of litigation for the United States and all of its transportation authorities, which have signed various agreements under Section 13(c) of the UMTA Act of 1964, as amended, many such authorities being located in states with no statutes similar to the Taylor Law, plaintiff is denying public interest in the Taylor Law and its principles after

having, at an earlier stage, participated wholeheartedly therein.

27. Defendants herein respectfully request that this Court not permit plaintiff's posting of the Supersedeas Bond, not permit plaintiff to harass defendants' appearing herein by your deponent or the Court with last minute motions designed to create additional expense for all parties.

28. Plaintiff has not shown by any test utilized by the District Court that it is entitled to a stay of the factfinding hearing scheduled two days after the return date of this motion, and in which plaintiff participated in the scheduling and the agreement that such factfinding go forward for the reasons set forth herein.

29. Plaintiff alleges that if a legislative resolution is imposed on plaintiff, the appeal will become moot.

30. It is respectfully suggested that the only action which would render this litigation moot would require the agreement of both parties. There are steps under the Taylor Law and in the procedural law of the State of New York which permit a union relief from a

legislative determination of a contract under the Taylor Law.

WHEREFORE, defendants, CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, its subsidiary corporations, its members, directors and employees, appearing herein as defendants, respectfully request that this Court deny the relief sought herein by plaintiff, together with such other and further relief, including the costs of this motion, as this Court may deem must and proper to the end that factfinding may go forward on March 9, 1977.

BARRY M. SHULMAN

Sworn to before me this
3rd day of March, 1977.

JANET McCADE
Notary Public, State of New York
No. 24-4503084
Qualified in Kings County
Commission Expires March 30, 1977

Exhibit A – Endorsement
annexed to Shulman Affidavit.

Leverton for Amalgamated Transit Union, Plaintiff -v- Perlman
New York Regional Transportation Authority et al.

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
FEB 10 1977
AT O'CLOCK M.
J. R. SCULLY, Clerk
UTICA

ENDORSEMENT
77-CV-45

Upon oral argument of the within motion for a preliminary injunction, all parties conceded that there were no issues of fact requiring an evidentiary hearing and that the motion was ripe for decision. Following oral argument, the court, therefore, made and dictated its findings of fact and conclusions of law into the record.

Based on the arguments, the papers submitted in support of and in opposition to this motion, and on the court's reasons, findings and conclusions placed on the record, the within motion for a preliminary injunction is denied in all respects since plaintiff has failed to make a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward plaintiff. See Sonesta Int'l Hotels Corp. v. Wellington Associates, 483 F.2d 247 (2d Cir. 1973).

Defendants' cross-motion to vacate the temporary restraining order is granted, and the parties directed to proceed forthwith with the fact-finding procedures of the Taylor Law.

So ordered.

Dated: Syracuse, N. Y.
February 9, 1977

Lloyd F. MacMahon

LLOYD F. MacMAHON*
United States District Judge

---

* Of the Southern District of New York, sitting by designation.

Exhibit B – Answer with Attachments annexed to Shulman Affidavit.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANS UNION, AFL-CIO 617 Wolf Street Syracuse, New York 13208 Plaintiff, -vs- CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, 508 Midtown Plaza, Syracuse, New York, et al., Defendants.	Civil Action No. 77-CV-45 ANSWER

The Defendants, CENTRAL NEW YORK REGIONAL TRANSPORTATION AURHORITY, CNY CENTRO, INC., CENTRO OF CAYUGA, INC., CENTRO OF OSWEGO, INC., and ROYAL L. O'DAY, Individually and as Chairman and member of CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, and as Director of CNY CENTRO, INC., CENTRO OF CAYUGA, INC. and CENTRO OF OWSEGO, INC., JOHN W. STONE, JR., Individually and as Vice-Chairman of the CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY and as Director of CNY CENTRO, INC., CENTRO OF CAYUGA, INC. and CENTRO OF OSWEGO, INC., WARREN H. FRANK, Individually and as member and Executive Director of CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, and as President of CNY CENTRO, INC., CENTRO OF CAYUGA, INC. and CENTRO OF OSWEGO, INC.; J. GREGORY MERRIAM, Individually and as Secretary and member of CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, CNY CENTRO, INC., CENTRO OF CAYUGA, INC., and CENTRO OF OSWEGO, INC., and DR. KENNETH C. BARTLETT, HAROLD L.

Exhibit B — Answer with Attachments annexed to Shulman Affidavit.

FISHER, ROBERT M. GIL MARTIN, HAROLD W. ORCHARD and LESLIE J. PARNELL, all individually and as members of the CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY and Directors of CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, CNY CENTRO, INC., CENTRO OF CAYUGA, INC. and CENTRO OF OSWEGO, INC., for answer to the Verified Complaint herein:

FIRST: ADMIT so much of paragraph designated and numbered "3" of the Complaint herein as alleges that all of the Defendants appearing herein reside in the Northern District of New York.

SECOND: DENY knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph designated and numbered "4" of the Complaint; that Plaintiff is an unincorporated labor organization, and ADMIT, that at present Plaintiff is the duly authorized collective bargaining representative of its members or employees, including bus operators, garage, shop and building maintenance employees of CNY CENTRO, CENTRO OF CAYUGA, INC. and CENTRO OF OSWEGO, INC.

THIRD: ADMIT each and every allegation contained in paragraphs designated and numbered "5" and "6", "7", "8", "9", "10", "11", "12", "13", "15", "19", "20".

FOURTH: DENY knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated and numbered "14".

FIFTH: DENY that this cause of action arised under the Urban Mass Transportation Act of 1964, as amended.

SIXTH: ADMIT so much of paragraph designated and numbered "18", as alleges that the Authority filed applications under the Urban Mass Transportation Act for Federal capital grants under the

application numbers indicated therein, to assist in the purchase of the assets of the Syracuse and Eastern Transit Corporation, and to assist in the purchase of buses, bus shelters and equipment, and for the construction of facilities for the operation of bus transportation systems in Onondaga, Cayuga and Oswego Counties, and that the Authority is eligible for an annual operating grant from the Urban Mass Transportation Administration, United States Department of Transportation, to cover certain operating expenses of CNY CENTRO, INC., with respect to its providing public transportation, but DENY the relevance of such allegation to this litigation.

SEVENTH: ADMIT such of the allegations in paragraph designated and numbered "21" as allege that pursuant to Section 13 (c) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C., Section 1609 (c). On March 11, 1975, the Authority, Centro and Plaintiff Division 580 entered into the 13 (c) Agreement, alleged in the Complaint, but DENY that such Agreement is in any way controllin or determinative of the issues in this litigation and further DENY that all of the interests of Centro's employees were at any time protected by such 13 (c) Agreement, or any successor agreement; and further DENY that the alleged 13 (c) Agreement or any successor thereto, was intended by the parties, or by its or their terms to mandate arbitration, except in the sole event that public employees are adversely affected by a direct result of a federal operating or capital grant referred to therein as a "Project".

EIGHTH: ADMIT so much of paragraph designated and numbered "23" as relates the provisions of paragraph "16" of the above-mention-

ed 13 (c) Agreement, but DENY that the said Agreement is in any way controlling or determinative of the issues herein.

NINTH: ADMIT paragraphs designated and numbered "25" and "26" in the Complaint.

TENTH: DENY each and every other allegation of Plaintiff's Complaint not hereinbefore specifically admitted.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

ELEVENTH: That Defendant, CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, CNY CENTRO, INC., CENTRO OF CAYUGA, INC. and CENTRO OF OSWEGO, INC., are agencies of the State of New York and are Public Benefit Corporations created by act of the Legislature of the State of New York, and that the individual Defendants, O'DAY, STONE, MERRIAM and FRANK, are officers and employees of said State Agencies and Public Benefit Corporations appearing herein, and they together with the other individual defendants appearing herein, are members of the CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY and Directors of the said subsidiary corporations, CNY CENTRO, INC., CENTRO OF CAYUGA, INC. and CENTRO OF OSWEGO, INC.

TWELFTH: That this litigation is commenced against such individual defendants in their official capacity and that the Complaint contains no allegations against them in any other capacity.

THIRTEENTH: That no Defendant appearing herein has consented to the bringing of this litigation and that it is therefore barred by Amendment XI to the Constitution of the United States and that for this reason this Court has no jurisdiction over the defendants appearing herein.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

FOURTEENTH: That this Court has no jurisdiction over the subject matter set forth in the Complaint herein.

FOR A THIRD, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

FIFTEENTH: That the litigation commenced herein concerns an interpretation of New York State Law and more specifically, Section 209 et seq of the Civil Service Law of the State of New York.

SIXTEENTH: That Defendant, New York State Public Relations Board is an Agency of the State of New York, created by the Legislature of the State of New York for the express purpose of supervising labor negotiations which have reached an impasse between all agencies of the State of New York and their public employees.

SEVENTEENTH: That the Plaintiff herein has not exhausted its administrative remedies before Defendant, PUBLIC EMPLOYEES RELATIONS BOARD.

FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

EIGHTEENTH: That the 13 (c) Agreement referred to in Plaintiff's Complaint is not the 13 (c) Agreement in force between the parties herein, but has expired and has been superseded by a National 13 (c) Agreement executed between the Amalgamated Transit

Workers Union, the AFL-CIO and the America Public Transportation Association, and endorsed and accepted by Plaintiff herein and by Centro. A copy of such National 13 (c) Agreement is annexed hereto as Exhibit "A". That such National 13 (c) Agreement was executed on the 23rd day of July, 1975 and was thereafter adopted by Plaintiff and corporate Defendants herein as aforesaid, on August 11, 1975.

NINETEENTH: That on subsequent occasions, the parties herein again endorsed such 13 (c) Agreement and accepted it as governing their relationships.

TWENTIETH: That said National 13 (c) Agreement does not contain arbitration provisions of the sort alleged by Plaintiff.

FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

TWENTY-FIRST: That the said 13 (c) Agreement was intended and by its language solely applies to the protection of public employees who are adversely affected directly as the result of a Federal operation or capital grant referred to therein as a "Project".

TWENTY-SECOND: That the 13 (c) Agreement alleged in the Complaint, or any successor 13 (c) Agreement, does not compel, require or even provide for the arbitration of interests or contract terms after expiration of a labor agreement where negotations have reached an impasse.

TWENTY-THIRD: That the 13 (c) Agreement does not provide for or govern the requirement for equity or interest arbitration between the parties, but that the resolution of contract negotiations which have reached an impasse is controlled by the Civil Service Law

of the State of New York.

FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

TWENTY-FOURTH: That the parties hereto by their actions have voluntarily and jointly submitted themselves to impasse proceedings under the New York State Civil Service Law, as aforestated. That upon reaching an impasse, both Plaintiff herein and corporate Defendants, jointly requested the appointment of a mediator by PUBLIC EMPLOYEES RELATIONS BOARD and met on three separate occasions with the parties.

TWENTY-SIXTH: That thereafter when the impasse continued, corporate Defendant, CNY CENTRO, INC. requested that PUBLIC EMPLOYEES RELATIONS BOARD appoint a fact-finder and that such a fact-finder was appointed to first meet with the parties on the 21st day of December, 1976. That a second date for fact-finding was set for the 24th day of January, 1976, and was adjourned for the convenience of counsel to Plaintiff to the 9th day of February, 1976.

TWENTY-SEVENTH: That both parties have agreed to fact-finding under said Civil Service Law to commence on the 9th day of March, 1977, and that a fact-finder has been appointed by PUBLIC EMPLOYEES RELATIONS BOARD to meet with the parties on such date.

TWENTY-EIGHTH: That the parties have therefore clearly indicated their intent to proceed under the New York State Civil Service Law and not in accordance with the alleged terms of the 13 (c) Agreement.

TWENTY-NINTH: That the Plaintiffs have waived any rights

which they might have had, if any, under the said 13 (c) Agreement, but Defendants appearing herein deny that Plaintiff has any such rights in the first instance.

THIRTY: That by reason of the action of the parties herein, this litigation is moot and not justiciable.

FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

THIRTY-FIRST: That there is no contract of any nature between the Plaintiffs herein and the Defendants appearing herein, which mandates arbitration between the Plaintiff and Defendants appearing herein, of interest arising our of impasse in labor disputes at the termination of a labor agreement. The now expired Labor Agreement between the parties hereto provided only for grievance arbitration of disputes which arise during and out of the course of public employment.

FOR AN EIGHTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

THIRTY-SECOND: That Plaintiff herein has waived its right to the application which it is seeking herein, having already voluntarily submitted to the provisions of the Taylor Law and having consented to the appointment of a fact-finder and having participated in mediation under the Taylor Law.

FOR A NINTH, SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT HEREIN, THE DEFENDANTS APPEARING HEREIN ALLEGE:

THIRTY-THIRD: That Plaintiff herein is mandated by

statutes of Defendant, PUBLIC EMPLOYEES RELATIONS BOARD, to continue to resolve impasse procedures under the Civil Service Law of the State of New York.

THIRTY-FOURTH: That there is no agreement in effect between the parties hereto, such as is provided for in Section 209(c) of the Civil Service Law of the State of New York, as permitting an employer and employee organization to agree to arbitrate the terms of a new Labor Agreement, or to resolve the impasse in labor negotiations.

THIRTY-FIFTH: That therefore the parties are bound to the impasse procedures set forth in Section 209(3) et seq of the Civil Service Law of the State of New York.

THIRTY-SIXTH: That the parties hereto never intended the various 13 (c) Agreements alleged in the Complaint or in this Answer to supersede Taylor Law procedures and no such intent can be found anywhere within the language of the 13 (c) Agreement, nor within the actions of the parties hereto.

WHEREFORE, the Defendants appearing herein and each of them demand Judgment dismissing the Complaint herein, with costs and together with such other and further relief as this Court deems just and proper.

DATED: February 24, 1977

BARRY M. SHULMAN

AXENFELD, WEBB, MARSHALL,
BERSANI & SCOLARO, ESQS.
Attorneys for Defendants
CENTRAL NEW YORK REGIONAL TRANSPORTATI
AUTHORITY
CNY CENTRO, INC.
CENTRO OF CAYUGA, INC.
CENTRO OF OSWEGO, INC.

Exhibit B — Answer with Attachments annexed to Shulman Affidavit.

Office and P. O. Address
500 Building
500 South Salina Street
Syracuse, New York 13202
(315) 422-9201

TO: BLITMAN & KING
Attorneys for Plaintiffs
Office and P. O. Address
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

PUBLIC EMPLOYMENT RELATIONS BOARD
50 Wolf Road
Albany, New York 12226

BEST COPY AVAILABLE

Exhibit B — Answer with Attachments annexed to Shulman Affidavit.

AGREEMENT PURSUANT TO SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED.

WHEREAS, the Congress recognized in the National Mass Transportation Assistance Act of 1974 that the urban mass transportation industry required operating assistance to maintain service to the public, stimulate ridership and assist communities in meeting their overall development aims; and

WHEREAS, Sections 3(e)(4), 5(n)(1) and 13(c) of the Act require, as a condition of any such assistance, that suitable fair and equitable arrangements be made to protect urban mass transportation industry employees affected by such assistance; and

WHEREAS, the fundamental purpose and scope of this agreement is to establish such fair and equitable employee protective arrangements on a national and uniform basis for application throughout the urban mass transportation industry to those employees and employees represented by the labor organizations signatory hereto; and

WHEREAS, the undersigned American Public Transit Association and the national labor organizations signatory hereto have agreed upon the following arrangements as fair and equitable for application to any urban mass transportation employer ("Recipient") who is a signatory hereto and who has been designated to receive federal operating assistance under the Urban Mass Transportation Act of 1964, as amended ("Act");

NOW, THEREFORE, it is agreed that the following terms and conditions shall apply and shall be specified in any contract governing such federal assistance to the Recipient:

(1) The term "Project", as used in this agreement, shall not be limited to the particular facility, service, or operation assisted by federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project" shall, when used in this agreement, include events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises or falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this agreement.

(2) The Project, as defined in paragraph (1) shall be performed and carried out in full compliance with the protective conditions described herein.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revisions or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this agreement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this agreement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued.* Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this agreement the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

(5) (a) In the event the Recipient contemplates any change in the organization or operation of its system which may result in the dismissal or displacement of employees, or rearrangement of the working forces covered by this agreement, as a result of the Project, the Recipient shall do so only in accordance with the provisions of subparagraph (b) hereof. Provided, however, that changes which are not a result of the Project, but which grow out of the normal exercise of seniority rights occasioned by seasonal or other normal schedule changes and regular picking procedures under the applicable collective bargaining agreement, shall not be considered within the purview of this paragraph.

(b) The Recipient shall give to the unions representing the employees affected thereby, at least sixty (60) days' written notice of each proposed change, which may result in the dismissal or displacement of such employees or rearrangement of the working forces as a result of the Project, by sending certified mail notice to the union representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes, including an estimate of the number of employees affected by the intended changes, and the number and classification of any jobs in the Recipient's employment available to be filled by such affected employees.

At the request of either the Recipient or the representatives of the affected employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this agreement shall commence immediately. These negotiations shall include determining the selection of forces from among the employees of other urban mass transportation employers who may be affected as a result of the Project, to establish which such employees shall be offered employment with the Recipient for which they are qualified or can be trained; not, however, in contravention of collective bargaining agreements relating thereto. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dis-

* As an addendum to this agreement, there shall be attached where applicable the arbitration or other dispute settlement procedures or arrangements provided for in the existing collective bargaining agreements or any other existing agreements between the Recipient and the Union, subject to any changes in such agreements as may be agreed upon or determined by interest arbitration proceedings.

Exhibit B — Answer with Attachments annexed to Shulman Affidavit.

Any dispute may be submitted to arbitration in accordance with the procedures contained in paragraph (15) hereof. In any such arbitration, final decision must be reached within sixty (60) days after selection or appointment of the neutral arbitrator. In any such arbitration, the terms of this agreement are to be interpreted and applied in favor of providing employee protections and benefits no less than those established pursuant to §5(2)(f) of the Interstate Commerce Act.

(6)(a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period following the date on which he is first "displaced", and shall continue during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his seniority rights to secure another position to which he is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(7)(a) Whenever any employee is laid off or otherwise

deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed" and shall continue during the protective period, as follows:

Employee's length of service prior to adverse effect	Period of protection
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than fifty per centum of each such months based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project, or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the agreement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his employer, he may be required by the Recipient to accept reasonably comparable employment for which he is physically

and mentally qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (c) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this agreement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him for which he is physically and mentally qualified and does not require a change in his place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of his allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his representative, or by final arbitration decision rendered in accordance with paragraph (15) of this agreement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this agreement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or displacement allowance as if he were continuing to perform services in his former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his

disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this agreement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with the Recipient in accordance with this agreement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the travelling expenses for himself and members of his immediate family, including living expenses for himself and his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or his representatives.

(b) If any such employee is laid off within three (3) years after changing his point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within ninety (90) days after the date on which the expenses were incurred.

(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Recipient for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person

and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Recipient shall protect him against loss under such contract, and in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him as his home, the Recipient shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within one year after the effective date of the change in residence.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement within ten (10) days thereafter to select a third appraiser or to agree upon a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser, including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from his residence than was his former work location, or (B) is more than thirty (30) normal highway route miles from his residence and also farther from his residence than was his former work location.

(13) A dismissed employee entitled to protection under this agreement may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this agreement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

Exhibit B — Answer with Attachments annexed to Shulman Affidavit.

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 " " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 " " over	12 " "

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which he performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this agreement, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of his dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(15)(a) In the event there arises any labor dispute with respect to the protection afforded by this agreement, or with respect to the interpretation, application or enforcement of the provisions of this agreement, not otherwise governed by Section (12)(c) hereof, the Labor-Management Relations Act, as amended, Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective agreement involving the Recipient and the union, which cannot be settled by the parties thereto within thirty (30) days after the

dispute or controversy arises, it may be submitted at the written request of the Recipient or the union to a board of arbitration to be selected as hereinafter provided. One arbitrator is to be chosen by each interested party, and the arbitrators thus selected shall endeavor to select a neutral arbitrator who shall serve as chairman. Each party shall appoint its arbitrator within five (5) days after notice of submission to arbitration has been given. Should the arbitrators selected by the parties be unable to agree upon the selection of the neutral arbitrator within ten (10) days after notice of submission to arbitration has been given, then the arbitrator selected by any party may request the American Arbitration Association to furnish, from among members of the National Academy of Arbitrators who are then available to serve, five (5) arbitrators from which the neutral arbitrator shall be selected. The arbitrators appointed by the parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. If any party fails to select its arbitrator within the prescribed time limit, the highest officer of the Union or of the Recipient or their nominees, as the case may be, shall be deemed to be the selected arbitrator, and the board of arbitration shall then function and its decision shall have the same force and effect as though all parties had selected their arbitrators. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (5) of this agreement, the board of arbitration shall meet within fifteen (15) days after selection or appointment of the neutral arbitrator and shall render its decision within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision by majority vote of the arbitration board shall be final and binding as the decision of the arbitration board, except as provided in subparagraph (b) below. All the conditions of the agreement shall continue to be effective during the arbitration proceedings.

(b) In the case of any labor dispute otherwise covered by subparagraph (a) but involving multiple parties, or employees of urban mass transportation employers other than those of the Recipient, which cannot be settled by collective bargaining, such labor dispute may be submitted, at the written request of any of the parties to this agreement involved in the dispute, to a single arbitrator who is mutually acceptable to the parties. Failing mutual agreement within ten (10) days as to the selection of an arbitrator, any of the parties involved may request the American Arbitration Association to furnish an impartial arbitrator from among members of the National Academy of Arbitrators who is then available to serve. Unless otherwise provided, in the case of arbitration proceedings under paragraph (5) of this agreement, the arbitrator thus appointed shall convene the hearing within fifteen (15) days after his selection or appointment and shall render his decision within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed. The decision of the neutral arbitrator shall be final, binding, and conclusive upon all parties to the dispute. All the conditions of the agreement shall continue to be effective during the arbitration proceeding. Authority of the arbitrator shall be limited to the determination of the dispute arising out of the interpretation, application, or operation of the provisions of this agreement. The

y arbitrator shall not have any authority whatsoever to alter, amend, or modify any of the provisions of any collective bargaining agreement.

(c) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the Recipient's burden to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (Hodgson's Affidavit in Civil Action No. 825-71).

(e) Nothing in this agreement shall be construed to enlarge or limit the right of any party to utilize, upon the expiration of any collective bargaining agreement or otherwise, any economic measures which are not inconsistent or in conflict with applicable laws or this agreement.

(16) Nothing in this agreement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law where applicable, including P. L. 93-236, enacted January 2, 1974; provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under the agreement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit.

(17) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to said claims. The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such addition-

and factual material as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as hereinabove provided by paragraph (15). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information denied in the pre-arbitration period which is relevant to the disposition of the claim.

Nothing included herein as an obligation of the Recipient shall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (10) hereof, nor make any such employer a third-party beneficiary of the Recipient's obligations contained herein, nor deprive the Recipient of any right of subrogation.

(18) During the employee's protective period, a dismissed employee shall, if he so requests, in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient, reasonably comparable to that which he held when dismissed, for which he is, or by training or re-training can become, qualified; not, however, in contravention of collective bargaining agreements relating thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this agreement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered,

or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any such person, enterprise, body, or agency, whether publicly- or privately-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

(20) The employees covered by this agreement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(21) In the event any provision of this agreement is held to be invalid, or otherwise unenforceable under the federal, State, or local law, in the context of a particular Project, the remaining provisions of this agreement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under §13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this agreement only as applied to that Project, and any other appropriate action, remedy, or relief.

(22) This agreement establishes fair and equitable employee protective arrangements for application only to federal operating assistance Projects under §§3(h) and 5 of the Act and shall not be applied to other types of assistance under §5 or under other provisions of the Act, in the absence of further understandings and agreements to that effect.

(23) The designated Recipient, as hereinabove defined, signatory hereto, shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by employees of the Recipient covered by this agreement, in accordance with this agreement and any applicable collective bargaining agreement. The parties recognize, however, that certain of the recipients signatory hereto, providing urban mass transportation services, have heretofore provided such services through contracts by purchase, leasing, or other arrangements and hereby agree that such practices may continue. Whenever any other employer provides such services through contracts by purchase, leasing, or other arrangements with the Recipient, or on its behalf, the provisions of this agreement shall apply.

(24) An employee covered by this agreement, who is not dismissed, displaced, or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced, or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding, shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this agreement.

Exhibit B — Answer with Attachments annexed to Shulman Affidavit.

(25) If any employer of the employees covered by this agreement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this agreement, the provisions of this agreement shall apply to such employee as of the date when he was so affected.

(26) Any eligible employer not initially a party to this agreement may become a party by serving written notice of its desire to do so upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory hereto, or their designee. In the event of any objection to the addition of such employer as a signatory, then the dispute as to whether such employer shall become a signatory shall be determined by the Secretary of Labor.

(27) In the context of a particular Project, any other union which is the collective bargaining representative of urban mass transportation employees in the service area of the Recipient, and who may be affected by the assistance to the Recipient within the meaning of 49 U.S.C.A. 1609(c), may become a party to this agreement as applied to the Project, by serving written notice of its desire to do so upon the other union representatives of the employees affected by the Project, the Recipient, and the Secretary of Labor. In the event of any disagreement that such labor organization should become a party to this agreement, as applied to the Project, then the dispute as to whether such labor organization shall participate shall be determined by the Secretary of Labor.

(28) This agreement shall be effective and be in full force and effect for the period from November 26, 1974 to and including September 30, 1977. It shall continue in effect thereafter from year to year unless terminated by the A.P.T.A. or by the national labor organizations signatory hereto upon one hundred twenty (120) days' written notice prior to the annual renewal date. Any signatory employer or labor organization may individually withdraw from the agreement effective October 1, 1977, or upon any annual renewal date thereafter, by serving written notice of its intention so to withdraw one hundred twenty (120) days prior to the annual renewal date; provided, however, that any rights of the parties hereto or of individuals established and fixed during the term of this agreement shall continue in full force and effect, notwithstanding the termination of the agreement or the exercise by any signatory of the right to withdraw therefrom. This agreement shall be subject to revision by mutual agreement of the parties hereto at any time, but only after the serving of a sixty (60) days' notice by either party upon the other.

(29) In the event any project to which this agreement applies is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Recipient or other applicant for federal funds; provided, however, that this agreement shall not merge into the contract of assistance but shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms, nor shall any other employee protective agreement nor any collective bargaining agreement merge into this agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

Exhibit B — Answer with Attachments annexed to Shulman Affidavit.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their duly authorized representatives.

AMERICAN PUBLIC TRANSIT ASSOCIATION

By: Stanley K. Foster Jr.

Date:

By: B M Stoker

Date: 7/23/75

AMALGAMATED TRANSIT UNION, AFL-CIO

By: D V Maroney

Date: 7-23-75

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

By: [illegible] Hurlan

Date: 7-23-75

CERTIFICATE OF SERVICE.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO
Plaintiff

-vs-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, et al.
Defendants

Civil Action No.
77-CV-45

CERTIFICATE OF SERVICE

I, BARRY M. SHULMAN, Attorney for the Defendants Central New York Regional Transportation Authority, its subsidiary corporations, and their members, directors and employees named as defendants herein hereby certify that on the 3rd day of March, 1977, I served the attached Affidavit in Oposition to Plaintiff's application for an Order to Show Cause, Motion, Affidavit and Exhibits, together with exhibits in support of said Affidavit submitted on behalf of said Defendants by depositing copies of the said papers in the United States Mail, postpaid, addressed to the appropriate attorney at his last known address to wit:

Jules 1. Smith, Attorney for Plaintiff
Blitman and King
500 Chamber Building
351 South Warren Street
Syracuse, New York 13202

Martin L. Barr, Attorney for PERB Defendants
New York State Public Employment Relations Board
50 Wolf Road
Albany, New York 12226

AXENFELD, WEBB, MARSHALL, BERSANI & SCOLARO

BY: Barry M. Shulman

CERTIFICATE OF SERVICE.

Office and Post Office Address
500 Building
500 South Salina Street
Syracuse, New York 13202

Telephone: (315) 422-9201

Dated: March 3,1977

MEMORANDUM OF JUDGE MacMAHON.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----------x

DIVISION 580, AMALGAMATED TRANSIT UNION, AFL-CIO,

Plaintiff,

-against-

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY et al.,

Defendants.

----------x

MacMAHON, District Judge.*

The within application under Rule 62(c), Fed. R.Civ.P., for a stay and other relief pending appeal of our order of February 11, 1977 denying plaintiff's motion for a preliminary injunction, is denied in all respects.

This action is rooted in a labor dispute between plaintiff transit union and defendant, Central

---

* Of the Southern District of New York, sitting by designation.

New York Regional Transportation Authority, an agency of the State of New York. It appeared upon the hearing that plaintiff's collective bargaining agreement with defendant expired on November 1, 1976 and that, while the parties were attempting to negotiate a new agreement, disputes arose and plaintiff invoked the impasse resolution procedures of the Taylor Law. Civil Service Law § 209 (a) through (d). The first step of those procedures, mediation, failed to resolve the dispute. Accordingly, the New York Public Employment Relations Board proceeded to the second step and appointed a fact-finding board which scheduled a hearing.

After some adjournments, a hearing was finally set for February 9, 1977. Two days before the scheduled hearing, plaintiff applied in the District Court, sitting in Syracuse, for a temporary restraining order bringing on a motion for a preliminary injunction. Since Judge Munson was disqualified, the matter was referred to the undersigned, who was then sitting in Utica by designation. Since we were in the midst of a trial, after the papers were read to us, we granted a temporary restraining order to preserve the status quo until we could reach the matter for a hearing.

On application of defense counsel to vacate the temporary restraining order, we accelerated the hearing of the motion for a preliminary injunction, with plaintiff's consent, in Syracuse on February 9, 1977. The essential question on the hearing was whether plaintiff had the right to compulsory arbitration under what was referred to as "the 13(c) agreement,"* or whether plaintiff was subject to the New York Taylor Law, Civil Service Law § 209, and its impasse resolution procedures.

Following the hearing, we denied plaintiff's application for a preliminary injunction and vacated the temporary restraining order for reasons which we dictated into the record. The transcript of the hearing is badly garbled, but essentially we held that plaintiff either waived its right to arbitration or voluntarily elected to proceed under the Taylor Law and could not, on the eve of the fact-finding hearings,

---

* The 13(c) agreement is an agreement among plaintiff, defendant and the prior owners of the transportation systems which had been taken over by the Urban Mass Transit Administration, United States Department of Transportation, under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1609(c).

change its course to the detriment of the transportation authority. It also appeared that plaintiff had failed to make a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair game for litigation and a balance of hardships tipping decidedly toward plaintiff.

The case posed novel questions of law, entangled with lurking questions of fact, all of which necessarily precluded a clear showing of probable success. Moreover, we could see no irreparable injury in plaintiff's proceeding to fact-finding, since all that the fact-finding board can do is render an advisory opinion. Against this, there was a decided public interest in the expeditious settlement through the Taylor Law of this labor dispute in the bus transportation industry of Central New York to the end that the riding public will not be confronted with inconvenience. In our view, that tipped the balance of hardship in favor of the defendant authority.

It now appears that, following our decision, fact-finding was first scheduled for February 16, 1977

but adjourned to March 9, 1977 to accommodate plaintiff's attorneys. As before, the within application for a stay comes on the eve of those hearings and strikes us as just a maneuver to gain some tactical advantage in this labor dispute. Moreover, a stay would in fact grant the injunction which, in our considered judgment, should be denied for the same reasons which prompted us to deny the application for a preliminary injunction and vacate the temporary restraining order. See 7 J. Moore, Federal Practice ¶ 62.05 at 62-18 et seq. (2d ed. 1975).

So ordered.

Dated: New York, N. Y.
March 7, 1977

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge